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Court of Appeal, Second Appellate District
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 3

MAX YANG; TRINITY FORCE INTERNATIONAL, a California corporation,
 	
    Plaintiffs and Appellants,
 	
v.
 	
MONROVIA-MYRTLE, LLC,
 	
    Defendant and Respondent.
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		Court of Appeal No.:
		    B291519
		
		Superior Court No.:
		    EC065459

Appeal from Los Angeles County Superior Court
Case No.: EC065459
Honorable Alan S. Rosenfield

APPELLANTS' OPENING BRIEF

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COURT OF APPEAL **SECOND** APPELLATE DISTRICT, DIVISION **THREE**	COURT OF APPEAL CASE NUMBER: **B291519**

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SUPERIOR COURT CASE NUMBER: **EC065459**

APPELLANT/ MAX YANG; TRINITY FORCE INTERNATIONAL, a Calif. Corp.
PETITIONER:

RESPONDENT/ MONROVIA-MYRTLE, LLC
REAL PARTY IN INTEREST:

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one):   [X] INITIAL CERTIFICATE   [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (name): Appellants, MAX YANG; TRINITY FORCE INTL.

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) MAX YANG, an individual	Plaintiff and Appellant
(2) TRINITY FORCE INTL., a Calif. Corp.	Plaintiff and Appellant
(3) MONROVIA-MYRTLE, LLC	Defendant and Respondent
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 2/19/19

JOSEPH A. WALKER, ESQ.
(TYPE OR PRINT NAME)

▶ _(signature)_
(SIGNATURE OF APPELLANT OR ATTORNEY)

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
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STATEMENT OF THE CASE

On July 1, 2016, Max Yang, an individual ("Yang") and Trinity Force International, a California corporation ("Trinity"), filed a complaint for damages against Monrovia-Myrtle, LLC, a California Limited Liability Company ("Monrovia"). The seven causes of action were: (1) Breach of Contract, (2) Breach of Express Warranty, (3) Fraudulent Representation, (4) Negligent Representation, (5) Unfair Business Practice, (6) Breach of Covenant of Good Faith and Fair Dealing, and (7) Wrongful Eviction. (1 AA 6-16) This action was preceded by an unlawful detainer action filed on April 13, 2016 by Monrovia against Yang and Trinity. Monrovia obtained a judgment on August 1, 2016 against Yang and Trinity for $25,000 in damages and for restitution and possession of the premises located at 423 South Myrtle Avenue, Monrovia, CA 91016.

On August 31, 2016, Yang and Trinity filed a First Amended Complaint for Damages. The causes of action were: (1) Breach of Contract, (2) Breach of Express Warranty, (3) Fraudulent Representation, (4) Negligent Representation, (5) Unfair Business Practice, and (6) Breach of Covenant of Good Faith and Fair Dealing. (1 AA 17-70)

On November 2, 2016, in this action Monrovia filed a Cross-Complaint against Yang and Trinity ("XC"). The causes of action were: (1) Breach of Lease, (2) Account Stated, and (3) Money Had and Received. (1 AA 78-125)

On December 16, 2016, the parties filed a Stipulation as to damages in the Cross-Complaint. (1 AA 135) It was stipulated that any damages obtained by Monrovia would be reduced by the $25,000 award obtained in the unlawful detainer action. The Court

entered an Order on January 9., 2017 approving the Stipulation. (1 AA 138)

There was a bench trial held on April 23 & 24, 2018. (RT 1) Judgment was entered on May 14, 2018. (1 AA 194) The Judgment provided that Yang and Trinity recover nothing from their First Amended Complaint. The Judgment provided that Monrovia recover a total sum of $730,189.10 from Yang and Trinity jointly and severally on the Cross-Complaint. Notice of Entry of Judgment was given on May 15, 2018. (1 AA 198)

The Notice of Appeal was filed July 13, 2018, by Yang and Trinity. (1 AA 204)

The trial exhibits were released to the parties. (1 AA 192 and 1 AA 193)

STATEMENT OF APPEALABILITY

This appeal is from the Judgment of the Los Angeles County Superior Court and is authorized by the Code of Civil Procedure §904.1(a)(1).

STATEMENT OF FACTS

On September 28, 2015, Yang and Trinity leased 423 South Myrtle, Monrovia, CA ("Property") from Monrovia. The lease term was 10 years ("Lease"). (1 AA 87) When Yang took possession in October, 2015, he alleged the Property was not in useable condition and he began a dispute with Monrovia. (RT 6-11) Yang requested various fixes, but no fixes occurred and he was served with a 3-day notice in April, 2016. (RT 11)

The Lease (1 AA 84-124) provided that no rent was to be paid the first 5 months of the Lease. (1 AA 87) This period covered October, 2015 through February, 2016. The 3-day notice was for

failure to pay April, 2016 rent. (1 AA 156, Ex 102)

Monrovia's Trial Brief (1 AA 149-181) for the Superior Court trial gives an accurate recitation of the factual history. (1 AA 156-158) As set forth there, Monrovia filed an Unlawful Detainer Action ("UD") on April 13, 2016. (1 AA 157) Judgment was entered for Monrovia on July 18, 2016, and possession was returned on August 24, 2016. (1 AA 157)

On July 1, 2016, Yang and Trinity filed an action against Monrovia. (1 AA 1-16) A First Amended Complaint ("FAC") was filed on August 31, 2016. (1 AA 17-20) The FAC was decided at trial. (1 AA 194-197) Yang and Trinity lost on all causes of action. Monrovia prevailed on the XC and was awarded damages of $730,189.10. (1 AA 194-197) In simple terms, Monrovia claimed that, as of the trial date of April 23, 2018 (RT 1), it had not obtained a new tenant. (1 AA 157) It, therefore, sought rent for the whole 10-year term of the Lease. The trial court agreed and basically awarded nine (9) years of future rent and future common area maintenance charges to the landlord. (RT 421)

From Appellants' perspective, there are two major issues presented in this appeal. The first is: Should a landlord judgment creditor have an affirmative duty to file a satisfaction of judgment upon the signing of a new lease procured by the same landlord for an overlapping portion of the term of the breached lease?

The second is: Should the trial court have calculated future lost rent damages using CACI No. 359 and CACI No. 3904B?

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ARGUMENT

I. **SHOULD A LANDLORD JUDGMENT CREDITOR HAVE AN AFFIRMATIVE DUTY TO FILE A SATISFACTION OF JUDGMENT UPON SIGNING A NEW LEASE PROCURED BY THE SAME LANDLORD FOR AN OVERLAPPING PORTION OF THE TERM OF THE BREACHED LEASE?**

A. Standard of Review

The facts for this issue are not in dispute and there is no case law on point. Therefore, the standard of review is an independent review. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432) It is a question of law as to whether a landlord has an affirmative duty to file a satisfaction of judgment after procuring a new lease for an overlapping portion of the term of the breached lease.

B. There Is An Impermissible Gap In The Statutory Scheme For A Landlord Judgment Creditor To Collect Future Damages.

1. California Civil Code §1951.2

California's Civil Code §1951.2 provides in relevant part:
(a) Except as otherwise provided in Section 1951.4, . . . if [lessee's] right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:
　　[¶¶]
(3) Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided;

There is an opportunity in the statutory scheme available to a landlord following an award for a breach of lease, which may result in

the landlord receiving a double recovery of rents to the detriment of a tenant-debtor.

According to Civil Code §1951.2, subsection (a)(3), a landlord may recover the full value of the breached lease term minus the rental loss the lessee proves could have reasonably been avoided by the landlord, subject to the conditions set forth under §1951.2, subsection (c).

According to subsection (c), future damages under subsection (a)(3) are permissible if either: (i) the lease provides for future recovery of damages minus the rental loss the lessee proves could have been reasonably avoided, or (ii) where landlord re-lets the subject property in a good faith effort to mitigate landlord's damages incurred by the breached lease prior to an award as provided by Civil Code §1951.2. Here the Lease provided for the recovery of unpaid rent for the balance of the Lease. (1 AA 106)

The opportunity for double recovery occurs where a landlord re-lets the subject property, post-judgment, for a time period that overlaps with the time period specified in the breached lease.

In such a scenario, on the one hand, the landlord is entitled to the award of future damages from the tenant-debtor arising out of the tenant-debtor's breach of lease, and on the other hand, the landlord is entitled to rents from the new tenant under the new lease agreement. As a result of this scenario, the landlord runs afoul of the principals for measuring damages after a breach of contract set forth under Civil Code §§3300 et seq. (See *Willis v. Soda Shoppers of California, Inc.* (1982) 134 Cal.App.3d 899, 904-905 (explaining that "the measure of damages for such breach is subject to the well established rule that a party damaged by a simple breach of contract

may not recover more than the party would have received by performance."))

Specifically, California Civil Code §3358 provides in full:

Except as expressly provided by statute, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides." (Civ. Code §3358)

And, Civil Code §3359 provides in full:

Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered." (Civ. Code §3359)

Re-letting after a judgment provides the landlord-creditor the opportunity to collect a double-recovery, or more than the amount the landlord would have gained by the full performance of the tenant. Section 1951.2 is silent as to the tenant-debtor's rights and the landlord-creditor's obligations in such a scenario.

In this case, at the time of trial, on April 23, 2018 (RT 1), Monrovia claimed that it had not obtained a new tenant (1 AA 157) and sought to recover the full rental value of the Lease as provided by its terms and pursuant to Section 1951.2. (1 AA 158-160; RT 413) The Trial Court appears to have accepted Monrovia's position that Monrovia was entitled to the full value of the Lease, but thoughtfully inquired of Monrovia's counsel regarding the following: "What is the outcome, if any, in next year, after judgment in this case, there's a new tenant that comes in? What happens then?" (RT 413:27-414:1)

Monrovia conceded that there is no case law on point as to the court's questioning. (RT 414:3-11) Monrovia's counsel succinctly

explained:

> "I've represented commercial landlords for 20 years, and that question comes up. There is actually no case on point, but there is this obligation, as an officer of the court, that if my client were to procure a tenant for, let's say, the last five years of his ten-year lease, then what happens is I go ahead and would file a partial satisfaction of judgment reducing the judgment amount that's entered. . . .
>
> So as to answer the question, the obligation would be upon the landlord or judgment creditor to file a partial satisfaction of judgment when a new tenant is procured."

(RT 414)

Indeed, Appellants Yang and Trinity would concur with Monrovia's position taken at trial; however, there is no clear authority, whether by statute or case law, obligating Monrovia to follow through with its stated position. Simply stated, where a landlord-creditor has re-let the subject property, the landlord should carry the burden of filing a satisfaction of judgment at the moment of contract with a new tenant for any overlapping time period covered by the breached lease.

2. Satisfaction of Judgment Procedure

Code of Civil Procedure §724.030 provides in full:

> When a money judgment is satisfied, the judgment creditor **immediately shall file** with the court an acknowledgment of satisfaction of judgment. This section does not apply where the judgment is satisfied in full pursuant to a writ. (Code Civ. Proc. §724.030) (*Emphasis added.*)

More recently, the legislature provided the ability for a judgment debtor to demand a partial satisfaction of judgment to be acknowledged

by the judgment creditor under Code of Civil Procedure §724.110. Under this statute, the judgment debtor may make a written demand of the judgment creditor to make an acknowledgment of partial satisfaction of the judgment. However, under CCP §724.110, it is incumbent upon the judgment debtor to initiate this process. In contrast, under CCP §724.030, the judgment creditor " immediately shall file" the acknowledgment of satisfaction of judgment.

Within the context of an ordinary creditor-debtor relationship where a creditor may garnish wages, repossess, foreclose, or otherwise collect the property of the debtor, the obligation on a debtor to initiate the procedure for a partial satisfaction of judgment appears adequate because the debtor can determine whether the creditor has satisfied at least some portion of the judgment. Whereas, as in this case, at least some portion of the judgment may be satisfied by re-letting the subject leased property to a new tenant, the old tenant-debtor is unable to determine or otherwise measure what portion of the judgment is satisfied without the goodwill participation of the landlord-creditor.

Accordingly, it is appropriate that the obligation for filing a satisfaction of judgment, in the context of a post-award re-lease scenario, should lie with the landlord-creditor and not with the tenant-debtor. The Appellants, judgment debtors, are asking this Court to find that upon the execution of a new lease, either oral or written, the judgment creditor shall file a satisfaction of judgment and serve same upon the judgment debtor. This satisfaction should cover that period of time where the future damage award time period overlaps with the new Lease.

/ / /

II. **SHOULD THE TRIAL COURT HAVE CALCULATED FUTURE LOST RENT DAMAGES USING CACI NO. 359 AND CACI NO. 3904B?**

A. **Standard Of Review**

The facts for this issue are not in dispute. Therefore, the standard of review is an independent review. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432) It is a question of law as to whether Civil Code §3283 as applied by CACI No. 359 and CACI No. 3904B requires a landlord to compute future lost rent back to present value on an annual basis, and not on an aggregate basis.

B. **Future Lost Rent Must Be Discounted On An Annual Basis**

Civil Code §3283 states in whole:

Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof, or certain to result in the future.

The Lease at Article 26(b)(iv) states in part: . . . . "Landlord's damages include the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of the rental loss that the Tenant proves could be reasonably avoided. The worth at the time of the award shall be determined by discounting the **aggregate** (*emphasis added*) of such amounts for the balance of the term to present value at one percent (1%) more than the discount rate of the Federal Reserve Bank in San Francisco in effect at the time of the award." (1 AA 106)

Mr. Theodore Fox, Monrovia's manager testified about the

calculation of future damages (RT 377-380)   He testified from Monrovia's **Trial Exhibit 107** where an objection was sustained for hearsay (RT 381-383)   However, the Court acknowledged it received the information from Mr. Fox's testimony. (RT 382-383)

The Court used the information on Monrovia's **Exhibit 107** to calculate the damage award. (RT 421-422)   A copy of Monrovia's one-page **Exhibit 107** is attached to this Brief to assist the Court in understanding Yang's argument. (ATTACHMENT 1)

In Mr. Fox's testimony concerning Monrovia's **Exhibit 107**, he said he applied a 3.25% discount for future rents as set forth in Lease Article 26 (b)(iv). (RT 378-379) (1 AA 106) And, he applied it to the **aggregate** future unpaid rent of $739,280. He applied no discount to CAM charges.

Yang argues that using an **aggregate** discount does not comply with Civil Code §3283 as applied by CACI No. 359 and CACI No. 3904B. There must be a separate discount calculation applied for each year of unpaid rent and CAM charges Monrovia sought. In this case, using **Exhibit 107**, there should have been a separate annual discount calculation for 9 years, years 2 through 10 of the Lease. This separate annual discount calculation should be applied to both the rent and the common area maintenance ("CAM") charges. There is nothing in CACI No. 359 that is inconsistent with the Lease or Civil Code §1951.2.

CACI No. 359 states in whole:

To recover for future harm, [*name of plaintiff*] must prove that the harm is reasonably certain to occur and must prove the amount of those future damages. The amount of damages for future harm must be reduced to present cash value. This is necessary because money received

now will, through investment, grow to a larger amount in the future. [*Name of defendant*] must prove the amount by which future damages should be reduced to present value.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide [*name of plaintiff*] with the amount of [his/her/its] future damages.

[You may consider expert testimony in determining the present cash value of future damages.] [You must use [the interest rate of _____ percent/ [and] *[specify other stipulated information*]] agreed to by the parties in determining the present cash value of future damages.]

Under the directions for use it states:

Give this instruction if future damages are sought and there is evidence from which a reduction to present value can be made. Give the next-to-last sentence if there has been expert testimony on reduction to present value. Unless there is a stipulation, expert testimony will usually be required to accurately establish present values for future losses. Give the last sentence if there has been a stipulation as to the interest rate to use or any other facts related to present cash value.

It would appear that because reduction to present value benefits the defendant, the defendant bears the burden of proof on the discount rate. (See *Wilson v. Gilbert* (1972) 25 Cal.App.3d 607, 613–614 [102 Cal.Rptr. 31] [no error to refuse instruction on reduction to present value when defendant presented no evidence].)

Present-value tables may assist the jury in making its determination of present cash value. Tables, worksheets, and an instruction on how to use them are provided in CACI No. 3904B, *Use of Present-Value Tables.*

Yang, who represented himself as a pro per, did not prove a

discount rate. He did not have to. Its formula was set forth in the Lease at Article 26(b)(iv). Through Mr. Fox's testimony, it was set at 3.25%. (RT 378-379)

Yang is in agreement that the Court appropriately eliminated from awarded damages the $25,000 from the UD judgment and the $27,200 in rent and the $14,443.83 in CAM charges waived by the limited jurisdiction UD action. (RT 421)

However, the Trial Court erred in calculating the discount back to present value for the post eviction rent and the post eviction CAM charges. The methodology set forth in CACI No.3904B should have been used. That methodology does not use an aggregate amount. It calculates the discount back to present value on an annual basis over however many years of future losses are involved. A copy of CACI No. 3904B is attached to this Brief to assist the Court in understanding Mr. Yang's argument. (ATTACHMENT 2)

This matter needs to be remanded to the Trial Court so it may accomplish the correct calculations.

CONCLUSION

This matter should be remanded to the trial court to, first, determine if there is a new lease in place, second, to recalculate damages using the methodology set forth in CACI No. 359 and CACI No. 3904B, and, third, to order that the landlord shall file a satisfaction of judgment if any overlapping new lease is signed.

DATED: 2/19, 2019   By: _____
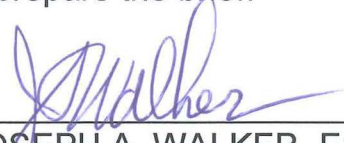
JOSEPH A. WALKER, ESQ.
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Attorneys for Appellants,
MAX YANG; TRINITY FORCE
INTERNATIONAL

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains **4,102** words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: 2/19 , 2019   By: _____

JOSEPH A. WALKER, ESQ.
STEPHEN M. LEWIS, ESQ.
Attorney for Appellants
MAX YANG; TRINITY FORCE
INTERNATIONAL

ATTACHMENTS

Ledger of Rent		EXHIBIT "107"		
423 South Myrtle Avenue, Monrovia, California 91016				
		RENT	CAM	
	15-Oct	$ 5,800.00	$ 1,604.87	
	15-Nov	$ 5,800.00	$ 1,604.87	
	15-Dec	$ 5,800.00	$ 1,604.87	
	16-Jan	$ 5,800.00	$ 1,604.87	
	16-Feb	$ 5,800.00	$ 1,604.87	
	16-Mar	$ 5,800.00	$ 1,604.87	
		$ (5,800.00)	$ (1,604.87)	
	16-Apr	$ 5,800.00	$ 1,604.87	
	16-May	$ 5,800.00	$ 1,604.87	
	16-Jun	$ 5,800.00	$ 1,604.87	
	16-Jul	$ 5,800.00	$ 1,604.87	
Subtotal		$ 52,200.00	$ 14,443.83	
Per agreement of parties		$ (25,000.00)		
Subtotal		$ 27,200.00	$ 14,443.83	
	16-Aug	$ 5,800.00	$ 1,604.87	
	16-Sep	$ 5,800.00	$ 1,604.87	
10/16-9/17 (12 x $5,960.00)		$ 71,520.00	$ 19,258.44	
10/17-9/18 (12 x $6,160.00)		$ 73,920.00	$ 19,258.44	
10/18-9/19 (12 x $6,320.00)		$ 75,840.00	$ 19,258.44	
10/19-9/20 (12 x $6,520.00)		$ 78,240.00	$ 19,258.44	
10/20-9/21 (12 x $6,720.00)		$ 80,640.00	$ 19,258.44	
10/21-9/22 (12 x $6,920.00)		$ 83,040.00	$ 19,258.44	
10/22-9/23 (12 x $7,120.00)		$ 85,440.00	$ 19,258.44	
10/23-9/24 (12 x $7,360.00)		$ 88,320.00	$ 19,258.44	
10/24-9/25 (12 x $7,560.00)		$ 90,720.00	$ 19,258.44	
Subotal		$ 739,280.00	$ 176,535.70	
		3.25%		
		$ 715,253.40		
Deposit		$ (11,600.00)		
Subtotal		$ 703,653.40		
Total Damages				
		$ 27,200.00	Pre-eviction rent	
		$ 14,443.83	Pre-eviction CAM	
		$ 703,653.40	Post-eviction rent	
		$ 176,535.70	Post-eviction CAM	
Total Damages		$ 921,832.93		
Offset		$ (150,000.00)		
Total		$ 771,832.93		

3904B. Use of Present-Value Tables

[For Table A:]

[Use Worksheet A and Table A to compute the present value of *[specify future damages that can be expressed as a regular dollar amount over a determinable period of time, e.g., lost future income or the cost of permanent medical care]*.

1. Determine the amount of *[name of plaintiff]*'s future loss for *[e.g., lost income]* each year. Enter this amount into Worksheet A, Step 1.

2. Determine the number of years that this loss will continue. Enter this amount into Worksheet A, Step 2.

3. Select the interest rate that you decide [based on the expert testimony that you have heard] represents the most likely rate of return on money invested today over that period of years. Enter this amount into Worksheet A, Step 3.

4. Select the appropriate Present Value Factor from Table A. To locate this factor, use the Number of Years from Step 2 on the worksheet and the Interest Rate from Step 3 on the worksheet and fin the number that is the intersection of the Interest Rate column and Number of Years row. (For example, if the number of years is 15 and the interest rate is 10 percent, the corresponding Present Value Factor is 7.61.) Enter the factor into Worksheet A, Step 4.

5. Multiply the amount of *[name of plaintiff]*'s annual future loss from Step 1 by the factor from Step 4. This is the present value of *[name of plaintiff]*'s total future loss for *[e.g., lost income]*. Enter this amount into Worksheet A, Step 5.

WORKSHEET A

Step 1: Repeating identical annual
dollar amount of future loss: $ _____

Step 2: Number of years that this
loss will continue: _____

Step 3: Interest rate that represents
a reasonable rate of return
on money invested today
over that period of years: _____%

Step 4: Present Value Factor from
Table A: _____

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Step 5:   Amount from Step 1 times
          Factor from Step 4: $ _____

Enter the amount from Step 5 on your verdict form as [*name of plaintiff*]'s total future economic loss for [*e.g., lost income*].]

[*For Table B:*]

[Use Worksheet B and Table B to compute the present value of [*specify future damages that cannot be expressed as a repeating identical dollar amount over a determinable period of time, e.g., future surgeries*].

1. Determine the future years in which a future loss will occur. In Column A, starting with the current year, enter each year through the last year that you determined a future loss will occur.

2. Determine the amount of [*name of plaintiff*]'s future loss for [*e.g., future surgeries*] for each year that you determine the loss will occur. Enter these future losses in Column B on the worksheet. Enter $0 if no future loss occurs in a given year.

3. Select the interest rate that you decide [based on the expert testimony that you have heard] represents a reasonable rate of return on money invested today over the number of years determined in Step 2. Enter this rate in Column C on the worksheet for each year that future-loss amounts are entered in Column B.

4. Select the appropriate Present Value Factor from Table B for each year for which you have determined that a loss will occur. To locate this factor, use the Number of Years from Column A on the worksheet and the Interest Rate in Column C on the worksheet and fin the number that is the intersection of the Interest Rate column and Number of Years row from the table. (For example, for year 15, if the interest rate is 10 percent, the corresponding Present Value Factor is 0.239.) Enter the appropriate Present Value Factors in Column D. For the current year, the Present Value Factor is 1.000. It is not necessary to select an interest rate for the current year in Step 3.

5. Multiply the amount in Column B by the factor in Column D for each year for which you determined that a loss will occur and enter these amounts in Column E.

6. Add all of the entries in Column E and enter this sum into Total Present Value of Future Loss.

Enter the amount from Step 6 on your verdict form as [*name of plaintiff*]'s total future economic loss for [*e.g., future surgeries*].]

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WORKSHEET B

A	B	C	D	E
Year	Dollar Amount of Future Loss Each Year	Interest Rate	Present Value Factor	Present Value of Future Loss
Current year (20___)	$	Not applicable	1.000	$
Year 1 (20___)	$	%		$
Year 2 (20___)	$	%		$
Year 3 (20___)	$	%		$
Year 4 (20___)	$	%		$
Year 5 (20___)	$	%		$
Year 6 (20___)	$	%		$
Year 7 (20___)	$	%		$
Year 8 (20___)	$	%		$
Year 9 (20___)	$	%		$
Year 10 (20___)	$	%		$
Year 11 (20___)	$	%		$
Year 12 (20___)	$	%		$
Year 13 (20___)	$	%		$
Year 14 (20___)	$	%		$
Year 15 (20___)	$	%		$
Year 16 (20___)	$	%		$
Year 17 (20___)	$	%		$
Year 18 (20___)	$	%		$
Year 19 (20___)	$	%		$
Year 20 (20___)	$	%		$
Year 21 (20___)	$	%		$
Year 22 (20___)	$	%		$
Year 23 (20___)	$	%		$
Year 24 (20___)	$	%		$
Year 25 (20___)	$	%		$
Total Present Value of Future Loss (add all amounts in Column E)				$

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New December 2010

Directions for Use

Give this instruction if one of the accompanying tables is to be given to the jury. Also give CACI No. 359, *Present Cash Value of Future Damages*, in a contract action, or CACI No. 3904A, *Present Cash Value*, in a tort action.

Use Worksheet A and Table A if future economic loss will occur over multiple years and the amount of the loss will be the same every year. For example, lost future income may be capable of being expressed in a fixe annual dollar figure Similarly, the cost of future medical care may be reduced to present value under Table A if it will be a regular amount over a determinable period of time.

Use Worksheet B and Table B in all other instances of future economic loss. In some cases, it may be necessary to give the jury both worksheets and tables if there are categories of both regular recurring future economic loss and irregular or varying loss.

The interest rate to be used in the tables must be established by stipulation or by the evidence. Expert testimony will usually be required to accurately establish present values for future economic losses. It would appear that because reduction to present value benefit the defendant, the defendant bears the burden of proof on the discount rate. (See *Wilson v. Gilbert* (1972) 25 Cal.App.3d 607, 613–614 [102 Cal.Rptr. 31] [no error to refuse instruction on reduction to present value when defendant presented no evidence].)

Tables should not be used for future noneconomic damages. (See *Salgado v. County of L.A.* (1998) 19 Cal.4th 629, 646–647 [80 Cal.Rptr.2d 46, 967 P.2d 585]; CACI No. 3904A, Present Cash Value.)

Sources and Authority

- "Neither party introduced any evidence of compounding or discounting factors, including how to calculate an appropriate rate of return throughout the relevant years. Under such circumstances, the 'jury would have been put to sheer speculation in determining . . . "the present sum of money which . . . will pay to the plaintiff . . . the equivalent of his [future economic] loss . . . ." ' " (*Schiernbeck v. Haight* (1992) 7 Cal.App.4th 869, 877 [9 Cal.Rptr.2d 716], internal citations omitted.)

- "[W]e cannot presume that the jurors were unable to make the various computations without the proffered aid of court and counsel after firs reaching necessary agreement on the various determinables comprising the formula. Further, defendant's counsel took a calculated risk in this regard; he produced neither statistician nor economist to aid his cause in this regard. Too, we have found no California cases which hold that use of the present table is indispensable to a proper award of damages for loss of future earning capacity . . . ." (*Howard v. Global Marine, Inc.* (1972) 28 Cal.App.3d 809, 816 [105 Cal.Rptr. 50].)

- "The trial court was also correct in refusing the proposed instruction, on its

merits, for lack of evidence which would have supported a jury findin of the 'present cash value' of any sum assessed as the value of [plaintiff]'s future earning capacity . . . . The computation of such 'present cash value' is 'difficult and confusing . . . to present to a jury' and, in the pertinent cases, the computation was apparently reached by the respective juries upon the basis of real evidence. Absent such evidence in the present case (and there was none), this jury would have been put to sheer speculation in determining (as the proposed instruction would have had it do) 'the present sum of money which, together with interest thereon when invested so as to yield the highest rate of interest consistent with reasonable security, will pay to the plaintiff . . . the equivalent of his loss of earning capacity . . . in the future . . . .' The instruction would have required the jury to reach this result without the benefi of evidence or advice as to the complicated factors of compounding and discounting which the instruction necessarily involved. There are 'present cash value' tables which might have assisted the jury in this regard, if judicially noticed for instruction purposes, but the proposed instruction included no reference to them. For these reasons, and on the instruction's merits, the trial court did not err in refusing to give it." (*Wilson, supra,* 25 Cal.App.3d at pp. 613–614, internal citations omitted.)

- "Anticipated future increases of medical costs may be presented to the jury. Expert testimony may be used with regard to a 'subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; . . .' Future medical expenses are such a subject. Testimony by actuaries is frequently used to show discount rates and the present value of future benefits [¶] The expert testimony was substantial evidence supporting the portion of the award relating to the future cost of attendant care. The substantial evidence test is applied in view of the entire record; other than a vigorous cross-examination of plaintiffs' expert, appellants presented no evidence on the cost of attendant care. The elaborate economic arguments presented in the briefs of appellants and amicus curiae might better have been presented to the jury in opposition to respondents' expert testimony." (*Niles v. City of San Rafael* (1974) 42 Cal.App.3d 230, 243 [116 Cal.Rptr. 733], internal citations omitted.)

- "Appellants claim that the 5 percent discount rate presented by the expert was too low. A discount rate, similar to an interest rate, is used to determine the present value of future expenses. The expert, in arriving at a 5 percent rate, used commercial investment studies pertaining to the riskiness of corporate bonds, charts compiled by the Federal Reserve System showing interest yields on various bonds since 1920, and tables published by the United States Savings and Loan League showing interest rates on savings accounts since 1929. He took into account the need for reasonable security of investment over the period of [plaintiff]'s life. All of this was apparently within the competence of the expert." (*Niles, supra,* 42 Cal.App.3d at pp. 243–244.)

Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 1552

California Tort Damages (Cont.Ed.Bar) Bodily Injury, § 1.96

4 Levy et al., California Torts, Ch. 52, *Medical Expenses and Economic Loss*, §§ 52.21, 52.22 (Matthew Bender)

15 California Forms of Pleading and Practice, Ch. 177, *Damages*, § 177.46 (Matthew Bender)

6 California Points and Authorities, Ch. 64, *Damages: Tort*, § 64.40 et seq. (Matthew Bender)

Table A - Present Value Factor of Repeating Identical Amount (Present value of $1 per period for t periods at $r\%$)

Number of Years		Interest Rate																		
	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%	16%	17%	18%	19%	20%
1	0.99	0.98	0.97	0.96	0.95	0.94	0.93	0.93	0.92	0.91	0.90	0.89	0.88	0.88	0.87	0.86	0.85	0.85	0.84	0.83
2	1.97	1.94	1.91	1.89	1.86	1.83	1.81	1.78	1.76	1.74	1.71	1.69	1.67	1.65	1.63	1.61	1.59	1.57	1.55	1.53
3	2.94	2.88	2.83	2.78	2.72	2.67	2.62	2.58	2.53	2.49	2.44	2.40	2.36	2.32	2.28	2.25	2.21	2.17	2.14	2.11
4	3.90	3.81	3.72	3.63	3.55	3.47	3.39	3.31	3.24	3.17	3.10	3.04	2.97	2.91	2.85	2.80	2.74	2.69	2.64	2.59
5	4.85	4.71	4.58	4.45	4.33	4.21	4.10	3.99	3.89	3.79	3.70	3.60	3.52	3.43	3.35	3.27	3.20	3.13	3.06	2.99
6	5.80	5.60	5.42	5.24	5.08	4.92	4.77	4.62	4.49	4.36	4.23	4.11	4.00	3.89	3.78	3.68	3.59	3.50	3.41	3.33
7	6.73	6.47	6.23	6.00	5.79	5.58	5.39	5.21	5.03	4.87	4.71	4.56	4.42	4.29	4.16	4.04	3.92	3.81	3.71	3.60
8	7.65	7.33	7.02	6.73	6.46	6.21	5.97	5.75	5.53	5.33	5.15	4.97	4.80	4.64	4.49	4.34	4.21	4.08	3.95	3.84
9	8.57	8.16	7.79	7.44	7.11	6.80	6.52	6.25	6.00	5.76	5.54	5.33	5.13	4.95	4.77	4.61	4.45	4.30	4.16	4.03
10	9.47	8.98	8.53	8.11	7.72	7.36	7.02	6.71	6.42	6.14	5.89	5.65	5.43	5.22	5.02	4.83	4.66	4.49	4.34	4.19
11	10.37	9.79	9.25	8.76	8.31	7.89	7.50	7.14	6.81	6.50	6.21	5.94	5.69	5.45	5.23	5.03	4.84	4.66	4.49	4.33
12	11.26	10.58	9.95	9.39	8.86	8.38	7.94	7.54	7.16	6.81	6.49	6.19	5.92	5.66	5.42	5.20	4.99	4.79	4.61	4.44
13	12.13	11.35	10.63	9.99	9.39	8.85	8.36	7.90	7.49	7.10	6.75	6.42	6.12	5.84	5.58	5.34	5.12	4.91	4.71	4.53
14	13.00	12.11	11.30	10.56	9.90	9.29	8.75	8.24	7.79	7.37	6.98	6.63	6.30	6.00	5.72	5.47	5.23	5.01	4.80	4.61
15	13.87	12.85	11.94	11.12	10.38	9.71	9.11	8.56	8.06	7.61	7.19	6.81	6.46	6.14	5.85	5.58	5.32	5.09	4.88	4.68
16	14.72	13.58	12.56	11.65	10.84	10.11	9.45	8.85	8.31	7.82	7.38	6.97	6.60	6.27	5.95	5.67	5.41	5.16	4.94	4.73
17	15.56	14.29	13.17	12.17	11.27	10.48	9.76	9.12	8.54	8.02	7.55	7.12	6.73	6.37	6.05	5.75	5.47	5.22	4.99	4.77
18	16.40	14.99	13.75	12.66	11.69	10.83	10.06	9.37	8.76	8.20	7.70	7.25	6.84	6.47	6.13	5.82	5.53	5.27	5.03	4.81
19	17.23	15.68	14.32	13.13	12.09	11.16	10.34	9.60	8.95	8.36	7.84	7.37	6.94	6.55	6.20	5.88	5.58	5.32	5.07	4.84
20	18.05	16.35	14.88	13.59	12.46	11.47	10.59	9.82	9.13	8.51	7.96	7.47	7.02	6.62	6.26	5.93	5.63	5.35	5.10	4.87
21	18.86	17.01	15.42	14.03	12.82	11.76	10.84	10.02	9.29	8.65	8.08	7.56	7.10	6.69	6.31	5.97	5.66	5.38	5.13	4.89
22	19.66	17.66	15.94	14.45	13.16	12.04	11.06	10.20	9.44	8.77	8.18	7.64	7.17	6.74	6.36	6.01	5.70	5.41	5.15	4.91
23	20.46	18.29	16.44	14.86	13.49	12.30	11.27	10.37	9.58	8.88	8.27	7.72	7.23	6.79	6.40	6.04	5.72	5.43	5.17	4.92
24	21.24	18.91	16.94	15.25	13.80	12.55	11.47	10.53	9.71	8.98	8.35	7.78	7.28	6.84	6.43	6.07	5.75	5.45	5.18	4.94
25	22.02	19.52	17.41	15.62	14.09	12.78	11.65	10.67	9.82	9.08	8.42	7.84	7.33	6.87	6.46	6.10	5.77	5.47	5.20	4.95
26	22.80	20.12	17.88	15.98	14.38	13.00	11.83	10.81	9.93	9.16	8.49	7.90	7.37	6.91	6.49	6.12	5.78	5.48	5.21	4.96
27	23.56	20.71	18.33	16.33	14.64	13.21	11.99	10.94	10.03	9.24	8.55	7.94	7.41	6.94	6.51	6.14	5.80	5.49	5.22	4.96
28	24.32	21.28	18.76	16.66	14.90	13.41	12.14	11.05	10.12	9.31	8.60	7.98	7.44	6.96	6.53	6.15	5.81	5.50	5.22	4.97
29	25.07	21.84	19.19	16.98	15.14	13.59	12.28	11.16	10.20	9.37	8.65	8.02	7.47	6.98	6.55	6.17	5.82	5.51	5.23	4.97
30	25.81	22.40	19.60	17.29	15.37	13.76	12.41	11.26	10.27	9.43	8.69	8.06	7.50	7.00	6.57	6.18	5.83	5.52	5.23	4.98
31	26.54	22.94	20.00	17.59	15.59	13.93	12.53	11.35	10.34	9.48	8.73	8.08	7.52	7.02	6.58	6.19	5.84	5.52	5.24	4.98
32	27.27	23.47	20.39	17.87	15.80	14.08	12.65	11.43	10.41	9.53	8.77	8.11	7.54	7.03	6.59	6.20	5.84	5.53	5.24	4.99
33	27.99	23.99	20.77	18.15	16.00	14.23	12.75	11.51	10.46	9.57	8.80	8.14	7.56	7.05	6.60	6.20	5.85	5.53	5.25	4.99
34	28.70	24.50	21.13	18.41	16.19	14.37	12.85	11.59	10.52	9.61	8.83	8.16	7.57	7.06	6.61	6.21	5.85	5.54	5.25	4.99
35	29.41	25.00	21.49	18.66	16.37	14.50	12.95	11.65	10.57	9.64	8.86	8.18	7.59	7.07	6.62	6.22	5.86	5.54	5.25	4.99
36	30.11	25.49	21.83	18.91	16.55	14.62	13.04	11.72	10.61	9.68	8.88	8.19	7.60	7.08	6.62	6.22	5.86	5.54	5.25	4.99
37	30.80	25.97	22.17	19.14	16.71	14.74	13.12	11.78	10.65	9.71	8.90	8.21	7.61	7.09	6.63	6.22	5.86	5.54	5.25	4.99
38	31.48	26.44	22.49	19.37	16.87	14.85	13.19	11.83	10.69	9.73	8.92	8.22	7.62	7.09	6.63	6.23	5.87	5.55	5.26	5.00
39	32.16	26.90	22.81	19.58	17.02	14.95	13.26	11.88	10.73	9.76	8.94	8.23	7.63	7.10	6.64	6.23	5.87	5.55	5.26	5.00
40	32.83	27.36	23.11	19.79	17.16	15.05	13.33	11.92	10.76	9.78	8.95	8.24	7.63	7.11	6.64	6.23	5.87	5.55	5.26	5.00
41	33.50	27.80	23.41	19.99	17.29	15.14	13.39	11.97	10.79	9.80	8.96	8.25	7.64	7.11	6.65	6.24	5.87	5.55	5.26	5.00
42	34.16	28.23	23.70	20.19	17.42	15.22	13.45	12.01	10.81	9.82	8.98	8.26	7.65	7.11	6.65	6.24	5.87	5.55	5.26	5.00
43	34.81	28.66	23.98	20.37	17.55	15.31	13.51	12.04	10.84	9.83	8.99	8.27	7.65	7.12	6.65	6.24	5.88	5.55	5.26	5.00
44	35.46	29.08	24.25	20.55	17.66	15.38	13.56	12.08	10.86	9.85	9.00	8.28	7.66	7.12	6.65	6.24	5.88	5.55	5.26	5.00
45	36.09	29.49	24.52	20.72	17.77	15.46	13.61	12.11	10.88	9.86	9.01	8.28	7.66	7.12	6.65	6.24	5.88	5.55	5.26	5.00
46	36.73	29.89	24.78	20.88	17.88	15.52	13.65	12.14	10.90	9.88	9.02	8.29	7.66	7.13	6.66	6.24	5.88	5.55	5.26	5.00
47	37.35	30.29	25.02	21.04	17.98	15.59	13.69	12.16	10.92	9.89	9.02	8.29	7.67	7.13	6.66	6.24	5.88	5.55	5.26	5.00
48	37.97	30.67	25.27	21.20	18.08	15.65	13.73	12.19	10.93	9.90	9.03	8.30	7.67	7.13	6.66	6.24	5.88	5.55	5.26	5.00
49	38.59	31.05	25.50	21.34	18.17	15.71	13.77	12.21	10.95	9.91	9.04	8.30	7.67	7.13	6.66	6.25	5.88	5.55	5.26	5.00
50	39.20	31.42	25.73	21.48	18.26	15.76	13.80	12.23	10.96	9.91	9.04	8.30	7.68	7.13	6.66	6.25	5.88	5.55	5.26	5.00

Note: The factors in this table are calculated as $\left(\frac{1}{r}\right) - \left(\frac{1}{r \times (1+r)^t}\right)$, where r is the interest rate and t is the number of years. This formula can be used to calculate any present value factors not shown on this table.

Table B - Present Value Factor for Lump Sum (Present value of $1 from period t at r %)

Number of Years	1%	2%	3%	4%	5%	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%	16%	17%	18%	19%	20%
1	0.990	0.980	0.971	0.962	0.952	0.943	0.935	0.926	0.917	0.909	0.901	0.893	0.885	0.877	0.870	0.862	0.855	0.847	0.840	0.833
2	0.980	0.961	0.943	0.925	0.907	0.890	0.873	0.857	0.842	0.826	0.812	0.797	0.783	0.769	0.756	0.743	0.731	0.718	0.706	0.694
3	0.971	0.942	0.915	0.889	0.864	0.840	0.816	0.794	0.772	0.751	0.731	0.712	0.693	0.675	0.658	0.641	0.624	0.609	0.593	0.579
4	0.961	0.924	0.888	0.855	0.823	0.792	0.763	0.735	0.708	0.683	0.659	0.636	0.613	0.592	0.572	0.552	0.534	0.516	0.499	0.482
5	0.951	0.906	0.863	0.822	0.784	0.747	0.713	0.681	0.650	0.621	0.593	0.567	0.543	0.519	0.497	0.476	0.456	0.437	0.419	0.402
6	0.942	0.888	0.837	0.790	0.746	0.705	0.666	0.630	0.596	0.564	0.535	0.507	0.480	0.456	0.432	0.410	0.390	0.370	0.352	0.335
7	0.933	0.871	0.813	0.760	0.711	0.665	0.623	0.583	0.547	0.513	0.482	0.452	0.425	0.400	0.376	0.354	0.333	0.314	0.296	0.279
8	0.923	0.853	0.789	0.731	0.677	0.627	0.582	0.540	0.502	0.467	0.434	0.404	0.376	0.351	0.327	0.305	0.285	0.266	0.249	0.233
9	0.914	0.837	0.766	0.703	0.645	0.592	0.544	0.500	0.460	0.424	0.391	0.361	0.333	0.308	0.284	0.263	0.243	0.225	0.209	0.194
10	0.905	0.820	0.744	0.676	0.614	0.558	0.508	0.463	0.422	0.386	0.352	0.322	0.295	0.270	0.247	0.227	0.208	0.191	0.176	0.162
11	0.896	0.804	0.722	0.650	0.585	0.527	0.475	0.429	0.388	0.350	0.317	0.287	0.261	0.237	0.215	0.195	0.178	0.162	0.148	0.135
12	0.887	0.788	0.701	0.625	0.557	0.497	0.444	0.397	0.356	0.319	0.286	0.257	0.231	0.208	0.187	0.168	0.152	0.137	0.124	0.112
13	0.879	0.773	0.681	0.601	0.530	0.469	0.415	0.368	0.326	0.290	0.258	0.229	0.204	0.182	0.163	0.145	0.130	0.116	0.104	0.093
14	0.870	0.758	0.661	0.577	0.505	0.442	0.388	0.340	0.299	0.263	0.232	0.205	0.181	0.160	0.141	0.125	0.111	0.099	0.088	0.078
15	0.861	0.743	0.642	0.555	0.481	0.417	0.362	0.315	0.275	0.239	0.209	0.183	0.160	0.140	0.123	0.108	0.095	0.084	0.074	0.065
16	0.853	0.728	0.623	0.534	0.458	0.394	0.339	0.292	0.252	0.218	0.188	0.163	0.141	0.123	0.107	0.093	0.081	0.071	0.062	0.054
17	0.844	0.714	0.605	0.513	0.436	0.371	0.317	0.270	0.231	0.198	0.170	0.146	0.125	0.108	0.093	0.080	0.069	0.060	0.052	0.045
18	0.836	0.700	0.587	0.494	0.416	0.350	0.296	0.250	0.212	0.180	0.153	0.130	0.111	0.095	0.081	0.069	0.059	0.051	0.044	0.038
19	0.828	0.686	0.570	0.475	0.396	0.331	0.277	0.232	0.194	0.164	0.138	0.116	0.098	0.083	0.070	0.060	0.051	0.043	0.037	0.031
20	0.820	0.673	0.554	0.456	0.377	0.312	0.258	0.215	0.178	0.149	0.124	0.104	0.087	0.073	0.061	0.051	0.043	0.037	0.031	0.026
21	0.811	0.660	0.538	0.439	0.359	0.294	0.242	0.199	0.164	0.135	0.112	0.093	0.077	0.064	0.053	0.044	0.037	0.031	0.026	0.022
22	0.803	0.647	0.522	0.422	0.342	0.278	0.226	0.184	0.150	0.123	0.101	0.083	0.068	0.056	0.046	0.038	0.032	0.026	0.022	0.018
23	0.795	0.634	0.507	0.406	0.326	0.262	0.211	0.170	0.138	0.112	0.091	0.074	0.060	0.049	0.040	0.033	0.027	0.022	0.018	0.015
24	0.788	0.622	0.492	0.390	0.310	0.247	0.197	0.158	0.126	0.102	0.082	0.066	0.053	0.043	0.035	0.028	0.023	0.019	0.015	0.013
25	0.780	0.610	0.478	0.375	0.295	0.233	0.184	0.146	0.116	0.092	0.074	0.059	0.047	0.038	0.030	0.024	0.020	0.016	0.013	0.010
26	0.772	0.598	0.464	0.361	0.281	0.220	0.172	0.135	0.106	0.084	0.066	0.053	0.042	0.033	0.026	0.021	0.017	0.014	0.011	0.009
27	0.764	0.586	0.450	0.347	0.268	0.207	0.161	0.125	0.098	0.076	0.060	0.047	0.037	0.029	0.023	0.018	0.014	0.011	0.009	0.007
28	0.757	0.574	0.437	0.333	0.255	0.196	0.150	0.116	0.090	0.069	0.054	0.042	0.033	0.026	0.020	0.016	0.012	0.010	0.008	0.006
29	0.749	0.563	0.424	0.321	0.243	0.185	0.141	0.107	0.082	0.063	0.048	0.037	0.029	0.022	0.017	0.014	0.011	0.008	0.006	0.005
30	0.742	0.552	0.412	0.308	0.231	0.174	0.131	0.099	0.075	0.057	0.044	0.033	0.026	0.020	0.015	0.012	0.009	0.007	0.005	0.004
31	0.735	0.541	0.400	0.296	0.220	0.164	0.123	0.092	0.069	0.052	0.039	0.030	0.023	0.017	0.013	0.010	0.008	0.006	0.005	0.004
32	0.727	0.531	0.388	0.285	0.210	0.155	0.115	0.085	0.063	0.047	0.035	0.027	0.020	0.015	0.011	0.009	0.007	0.005	0.004	0.003
33	0.720	0.520	0.377	0.274	0.200	0.146	0.107	0.079	0.058	0.043	0.032	0.024	0.018	0.013	0.010	0.007	0.006	0.004	0.003	0.002
34	0.713	0.510	0.366	0.264	0.190	0.138	0.100	0.073	0.053	0.039	0.029	0.021	0.016	0.012	0.009	0.006	0.005	0.004	0.003	0.002
35	0.706	0.500	0.355	0.253	0.181	0.130	0.094	0.068	0.049	0.036	0.026	0.019	0.014	0.010	0.008	0.006	0.004	0.003	0.002	0.002
36	0.699	0.490	0.345	0.244	0.173	0.123	0.088	0.063	0.045	0.032	0.023	0.017	0.012	0.009	0.007	0.005	0.004	0.003	0.002	0.001
37	0.692	0.481	0.335	0.234	0.164	0.116	0.082	0.058	0.041	0.029	0.021	0.015	0.011	0.008	0.006	0.004	0.003	0.002	0.002	0.001
38	0.685	0.471	0.325	0.225	0.157	0.109	0.076	0.054	0.038	0.027	0.019	0.013	0.010	0.007	0.005	0.004	0.003	0.002	0.001	0.001
39	0.678	0.462	0.316	0.217	0.149	0.103	0.071	0.050	0.035	0.024	0.017	0.012	0.009	0.006	0.004	0.003	0.002	0.002	0.001	0.001
40	0.672	0.453	0.307	0.208	0.142	0.097	0.067	0.046	0.032	0.022	0.015	0.011	0.008	0.005	0.004	0.003	0.002	0.001	0.001	0.001
41	0.665	0.444	0.298	0.200	0.135	0.092	0.062	0.043	0.029	0.020	0.014	0.010	0.007	0.005	0.003	0.002	0.002	0.001	0.001	0.001
42	0.658	0.435	0.289	0.193	0.129	0.087	0.058	0.039	0.027	0.018	0.012	0.009	0.006	0.004	0.003	0.002	0.001	0.001	0.001	0.000
43	0.652	0.427	0.281	0.185	0.123	0.082	0.055	0.037	0.025	0.017	0.011	0.008	0.005	0.004	0.002	0.002	0.001	0.001	0.001	0.000
44	0.645	0.418	0.272	0.178	0.117	0.077	0.051	0.034	0.023	0.015	0.010	0.007	0.005	0.003	0.002	0.001	0.001	0.001	0.000	0.000
45	0.639	0.410	0.264	0.171	0.111	0.073	0.048	0.031	0.021	0.014	0.009	0.006	0.004	0.003	0.002	0.001	0.001	0.001	0.000	0.000
46	0.633	0.402	0.257	0.165	0.106	0.069	0.044	0.029	0.019	0.012	0.008	0.005	0.004	0.002	0.002	0.001	0.001	0.000	0.000	0.000
47	0.626	0.394	0.249	0.158	0.101	0.065	0.042	0.027	0.017	0.011	0.007	0.005	0.003	0.002	0.001	0.001	0.001	0.000	0.000	0.000
48	0.620	0.387	0.242	0.152	0.096	0.061	0.039	0.025	0.016	0.010	0.007	0.004	0.003	0.002	0.001	0.001	0.001	0.000	0.000	0.000
49	0.614	0.379	0.235	0.146	0.092	0.058	0.036	0.023	0.015	0.009	0.006	0.004	0.003	0.002	0.001	0.001	0.000	0.000	0.000	0.000
50	0.608	0.372	0.228	0.141	0.087	0.054	0.034	0.021	0.013	0.009	0.005	0.003	0.002	0.001	0.001	0.001	0.000	0.000	0.000	0.000

Note: The factors in this table are calculated as $\dfrac{1}{(1+r)^t}$, where r is the interest rate and t is the number of years. This formula can be used to calculate any present value factors not shown on this table.

PROOF OF SERVICE
(C.C.P. §§1013, 1013a, 2015.5)

The undersigned declares as follows: I am employed in the County of Orange, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3991 MacArthur Blvd., Suite 350, Newport Beach, CA 92660. **My email address is jizabal@twlf.net.**

On the date set forth below, following ordinary business practices, I served a copy of the **APPELLANTS' OPENING BRIEF and APPELLANT'S APPENDIX, VOL. 1** on the following person(s) in this action:

California Court of Appeal
Second Appellate District - Division 3
300 S. Spring St., Fl. 2, N. Tower
Los Angeles, CA 90013
(Brief and Appendix, via TrueFiling)

The Hon. Alan S. Rosenfield *(Retired)*
c/o Clerk of the Court
Los Angeles County Superior Court
Glendale Courthouse
600 E. Broadway
Glendale, CA 91206
(Brief only, by Overnight Mail)

California Supreme Court
300 S. Spring St.
Los Angeles, CA 90013
(Brief only, via TrueFiling)

Attorney for Respondent
Mark J. Rosenbaum, Esq.
WOLF, RIFKIN, SHAPIRO, ET AL.
11400 West Olympic Blvd., 9th Floor
Los Angeles, CA 90064
Email: mrosenbaum@wrslawyers.com
(Brief & Appendix, via TrueFiling)

[ ] (BY MAIL) I am readily familiar with this firm's practice for collecting and processing correspondence for mailing in the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the U.S. Postal Service on the same day it is prepared, with the postage fully paid. I caused the above-mentioned document(s) to be deposited in the United States Postal Service, in a sealed envelope with postage fully prepaid and addressed to the person(s) being served, at Newport Beach, California.

[X] (BY OVERNIGHT DELIVERY) I caused the above-mentioned document(s) to be delivered to an overnight (express) delivery carrier, in an envelope designated by said overnight delivery carrier and addressed to the person(s) being served, with delivery fees provided for. **L.A. Superior Court-Glendale**

[ ] (BY MESSENGER) I served the documents by placing them in an envelope or package addressed to the person(s) being served, and providing them to a professional messenger service for service.

[X] (BY ELECTRONIC MAIL via truefiling.com) I caused the above-mentioned document(s) to be transmitted this date by electronic transmission to the persons being served, from Newport Beach, CA. **Court of Appeal; CA Supreme Court; Wolf, Rifkin, et al.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Newport Beach, CA.

Feb 20, 2019
(Date)

Judith Izabal
JUDITH E. IZABAL