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**Superior Court of California
County of Los Angeles**

In re the Marriage/Matter of:

: Case No.: BD X
: TENTATIVE DECISION ON ISSUE
: OF SPOUSAL SUPPORT
: *California Rules of Court, Rule 3.1590(c)*

PETITIONER:

X,

and

RESPONDENT:

X

In this document, the Court announces its Tentative Decision. The Tentative Decision will be the Statement of Decision unless within ten (10) days either party files and serves a document that specifies controverted issues or makes proposals not covered in the Tentative Decision as provide by *California Rules of Court, Rule 3.1590(c)*. Pending further order or entry of Judgment, the Tentative Decision constitutes the temporary orders of the Court.

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1 The Court makes the following findings of fact and conclusions of law on the issue of
2 spousal support under the Family Code and the decisional law construing it.

3 **1. General Considerations**

4 In fixing permanent spousal support¹ (*Marriage of Burlini* (1983) 143 Cal. App.
5 3d 65, 69, 1991 Cal. Rptr. 541) the Court balanced the relevant provisions of
6 statutory law and court decisions construing the provisions of the *Family Code*.

7 While the provisions of *Family Code Section 4320* create a framework for
8 balancing the relevant factors for an award of permanent support², certain later
9 enacted provisions of the *Family Code* augment or clarify other provisions.

10 Hence, this analysis is organized topically rather than by a mechanical step by step
11 adherence to the provisions of *Family Code Section 4320*. The court makes the
12 following findings:

13 **2. Consideration of Temporary Support**

14 In ordering support as provided herein the Court conducted a complete analysis of
15 permanent support. Permanent support as awarded herein was not based upon any
16 amount of temporary support ordered or denied. *Marriage of Schulze* (1997) 60
17 Cal. App. 4th 519, 70 Cal. Rptr. 2d 488. The Court did consider the amount and
18 duration of temporary support as ordered and paid as a factor under *Family Code*
19 *Section 4320(n)*. The Court did not fix support by mere reliance on temporary
20 support *Marriage of Zywiciel* (2000) 83 Cal. App. 4th 1078, 100 Cal. Rptr. 2d
21

22 ¹ For ease of reference the phrase spousal support is generically pressed into service for marital
23 and nonmarital, registered domestic partnership relationship since both are governed by and
24 permitted under the *Family Code*.

25 ² Use of the phrase “permanent support” is not intended to create an inference that support is not
26 modifiable, unless support is expressly made nonmodifiable under this ruling. Instead the phrase
27 “permanent support” is applied for the purpose of differentiating support awarded herein at time
28 of trial as compared to pretrial, temporary support.

1 242; nor did the Court consider or rely upon any “guideline amount” of temporary
2 support by reference to the “Santa Clara Guideline” *Marriage of Burlini* (1983)
3 143 Cal. App. 3d 65, 191 Cal. Rptr. 541.

4 **3. Weighing of Various Support Determining Factors**

5 With the purpose of accomplishing substantial justice for the parties, the Court
6 weighed the factors for consideration of support taking into account the applicable
7 circumstances of the parties. *Marriage of Cheriton* (2001) 92 Cal. App. 4th 269,
8 111 Cal. Rptr. 2d 755; *Marriage of Smith* (1990) 225 Cal. App. 3d 469, 274 Cal.
9 Rptr. 911.

10 **4. Marital Standard of Living**

11 **4.1. In General**

12 Preservation of the Marital Standard of Living is measured against the
13 practical economic reality that upon dissolution of marriage (or domestic
14 partnership) many family units are unable to enjoy precisely the same
15 standard of living. Against this backdrop, however, the Court is charged
16 with the obligation of not only making specific findings regarding the
17 Marital Standard of Living, but also ascertaining the extent to which the
18 Court can create support rights and assign support responsibilities equitably
19 measured against the Marital Standard of Living. Case law supports the
20 proposition that the Marital Standard of Living is not “the absolute measure
21 of reasonable need. ‘Marital Standard of Living’ is merely a threshold or
22 reference point against which all of the statutory facts may be weighed
23 (Citations Omitted). It is neither a floor nor a ceiling for a spousal support
24 award (Citations Omitted). The Legislature intended ‘marital standard of
25 living’ to be a general description of the station in life that the parties
26 achieved by the date of separation. Given that the legal standard, ‘marital
27 standard of living,’ is a mere general reference point...” (*Marriage of*
28

1 *Nelson* (2006) ---Cal. Rptr. 3d, 2005 WL 1305186 citing *Marriage of*
2 *Ostler & Smith* (1990) 223 Cal. App. 3d 33, 272 Cal. Rptr. 560).

3 **4.2. Specific Factual Findings With Respect to Standard of Living Under**
4 **Section 4332**

5 The Court has considered the evidence presented on the issue of Marital
6 Standard of Living by consideration of the current and previously filed
7 Income and Expense Declarations of the parties. The Court has considered
8 the following documents by reference to the Court file:

9 **4.2.1. X**

10 **4.3. Factual Determinations Regarding Other Circumstances of Marital**
11 **Standard of Living Under Section 4332**

12 Weighing the relevant and admissible evidence presented at the time of
13 trial, including giving due consideration to the reported expenses of both
14 parties from their above referenced Income and Expense Declarations, the
15 Court makes the following findings:

16 X

17 **5. Recipient's Needs Under Section 4320(d)**

18 X

19 **6. Payor's Needs Under Section 4320(d)**

20 X

21 **7. Earning Capacity Factors Related to Supported Party**

22 **Section 4320(a) - Earning Capacity of Each Party Sufficient to Maintain**
23 **Standard of Living During Marriage**

24 X

25 **8. Section 4320(a)(1) Marketable Skills of Supported Party**

26 **Job Market for Supported Party's Skills**

27 On the job market for the supported party's skills the Court finds that:

28 X

1 **9. Special Factors Affecting Earning Capacity of Supported Party**

2 **Time & Expense Required for Supported Party to Acquire Appropriate**
3 **Education or Training**

4 The time and expense required for the supported party to acquire appropriate
5 education or training the Court finds that:

6 X

7 **10. Need for Retraining or Education to Acquire More Marketable Skills**

8 As to the issue of whether the supported spouse requires retraining or education to
9 acquire more marketable skills or employment (*Marriage of Watt* (1989) 214 Cal.
10 App. 3d 340, 262 Cal. Rptr. 783), the Court finds that:

11 X

12 **11. Section 4320(a)(2) Earnings Impairment of Supported Party**

13 **Unemployment During Marriage to Permit Supported Party to Devote Time**
14 **to Domestic Duties**

15 As to the issue of whether the supported spouse devoted him/herself to domestic
16 duties (*Marriage of Cheriton* (2001) 92 Cal. App. 4th 269, 111 Cal. Rptr. 783), the
17 Court finds that:

18 X

19 **12. Section 4320(b) Supported Party's Contribution to Education Training or**
20 **Career of Supporting Party Under Section 4320(b)**

21 The Court makes the following findings on this issue:

22 X

23 **13. Supporting Party's Ability To Pay Under Section 4320(c) Taking into**
24 **Account Various Factors**

25 X

26 **14. Earned & Unearned Income**

27 The Court may consider future income from future exercise of stock options as
28 provided by *Marriage of Kerr* (1999) 77 Cal. App. 4th 87, 91 Cal. Rptr. 2d 374,

1 subject to the refining limitations described by the holdings of *Marriage of*
2 *Pearlstein* (2006) 137 Cal. App. 4th 1361, 40 Cal. Rptr. 3d 910 on the issue of
3 consideration of unrealized value of stock in calculation of gross income in child
4 support setting. The Court makes the following findings:

5 X

6 **15. Bonus Income**

7 The Court may consider bonus income in fixing support. *Marriage of Ostler &*
8 *Smith* (1990) 223 Cal. App. 3d 33, 272 Cal. Rptr. 560. On the issue of bonus
9 income, the Court makes the following findings:

10 X

11 **16. Assets**

12 The Court has broad discretion to consider the assets controlled by the supporting
13 party in fixing spousal support under *Marriage of Cheriton* (2001) 92 Cal. App.
14 4th 269, 111 Cal. Rptr. 2d 755 and *Marriage of de Guigne* (2002) 97 Cal. App. 4th
15 1353, 119 Cal. Rptr. 2d 430. Accordingly, the Court finds that:

16 X

17 **17. Management of Assets**

18 *Marriage of West* (2007) 152 Cal. App. 4th 240, 60 Cal. Rptr. 3d 858 encourages
19 trial courts to state an expectation that assets awarded to the supported spouse
20 should be prudently invested and not squandered.

21 X

22 **18. Impact of Asset Division Upon Support**

23 Absent the presence of other factors justifying such an order, the supported party
24 is not necessarily expected to deplete his or her assets to maintain his or her
25 support. The Court is obliged to consider the nature, extent and income generating
26 capacity of the supported party's post-dissolution net worth.

27 **19. Recipient Party's Separate Property Estate under Section 4321(a)**

28 X

1 **20. Recipient Party's Share of Community Property under Section 4321(a)**

2 X

3 **21. Section 4320(e) Obligations & Assets Including Separate Property of Each**
4 **Party**

5 If the supported spouse has sufficient assets, both from his/her separate estate and
6 his/her share of the community estate from the final division of the property,
7 including the income potential from the estate as a whole, under *Marriage of Terry*
8 (2000) 80 Cal. App. 4th 921, 95 Cal. Rptr. 2d 760, the Court makes the following
9 findings:

10 X

11 **22. Section 4320(f) Duration of Marriage**

12 Post-dissolution support is typically awarded for only as long as necessary to
13 permit the supported spouse to become self supporting.

14 **23. Displaced Homemaker**

15 Case law supports awards of support taking into account the issue of whether the
16 supported party is a displaced homemaker. On this issue, the Court finds that:

17 X

18 **24. Unreasonable Delays in Securing Employment**

19 X

20 **25. Section 4320(l) Factors**

21 Both case and statute support the proposition that a supported party should be
22 informed of the Court's expectations regarding the supported party appropriately
23 contributing to his/her own responsibility to become self supporting. *Marriage of*
24 *Gavron* (1988) 203 Cal. App. 3d 705, 250 Cal. Rptr. 148 and as clarified by the
25 holding of *Marriage of Schmir* (2005) 134 Cal. App. 4th 43, 35 Cal. Rptr. 3d 716,
26 The Court articulates its expectations about the plan for the supported party to
27 become self-supporting as follows:

28 X

1 **26. Goal to Become Self Supporting**

2 X

3 **27. Exercise of Discretion Under Section 4336 Including Periods of Separation**
4 **during Marriage**

5 X

6 **28. Duration of Order for Support**

7 Within the range of its broad discretion in fixing the amount and duration of
8 support (*Marriage of Smith* (1990) 225 Cal. App. 3d 469, 274 Cal. Rptr. 911),
9 including the Court's power to reserve jurisdiction to award support (*Marriage of*
10 *Beck* (1997) 57 Cal. App. 4th 341, 67 Cal. Rptr. 2d 79). Based on the evidence
11 presented here, the Court makes the following findings and conclusions regarding
12 the duration of spousal support:

13 X

14 Based on the general findings set forth next above, and for the reasons further
15 specified here (*Marriage of Christie* (1994) 28 Cal. App. 4th 849, 34 Cal. Rptr. 2d
16 135), the Court makes the following findings and conclusions:

17 X

18 **29. Order for Step Down in Payment of Support**

19 Where the Court articulates a justifiable expectation that support should be
20 downwardly adjusted (stepped down), based on a reasonable inference drawn from
21 the facts concerning an increased ability of the supported party to provide his or
22 her own support at the time of the step down (*Marriage of Richmond* (1980) 105
23 Cal. App. 3d 352, 164 Cal. Rptr. 381, *Marriage of Drapeau* (2001) 93 Cal. App.
24 4th 1086, 114 Cal. Rptr. 2d 6, *Marriage of Anninger* (1009) 220 Cal. App. 3d 230,
25 269 Cal. Rptr. 388, *Marriage of Gavron* (1988) 203 Cal. App. 3d 705, 250 Cal.
26 Rptr. 148, *Marriage of Cheriton* (2001) 92 Cal. App. 4th 269, 111 Cal. Rptr. 2d
27 755, and *Marriage of Paul* (1985) 173 Cal. App. 3d 913, 219 Cal. Rptr. 318), the
28 Court makes the following findings and conclusions:

1 X

2 **30. Factors Justifying Amount of Reductions**

3 As required by *Marriage of West* (2007) 152 Cal. App. 4th 240, 60 Cal. Rptr. 3d
4 858, the court cites the following factors justifying the amount of reductions in
5 support:

6 X

7 **31. Divestiture of Jurisdiction**

8 On the issue of whether the Court should divest itself of jurisdiction to award
9 support (*Marriage of Baker* (1992) 3 Cal. App. 4th 491, 4 Cal. Rptr. 2d 553), the
10 Court makes the following findings and conclusions:

11 X

12 **32. Shifting the Burden of Proof to the Supported Party**

13 As to whether the Court shall shift the burden of proof to the supported party
14 (*Marriage of Huntington* (1992) 10 Cal. App. 4th 1513, 14 Cal. Rptr. 2d 1), the
15 Court makes the following findings and conclusions:

16 X

17 **33. Section 4320(g) Supported Party's Ability to Engage in Gainful Employment**
18 **Without Unduly Interfering with the Interests of Dependent Children in**
19 **Custody of Supported Spouse.**

20 Applying the principle of placing the needs of the minor children of the marriage
21 ahead of the supported party's ability to engage in gainful employment, including
22 the deferral of employment or training, including the special needs of the children
23 of this relationship (*Marriage of Rosan* (1972) 25 Cal. App. 3d 885, 101 Cal. Rptr.
24 295, the Court finds that:

25 X

26 **34. Section 4320(h) Age & Health of Parties**

27 While the age and health of the parties is a factor in setting support, decisional law
28 prohibits the Court from ignoring the other factors in setting support, which must

1 be weighed in conjunction with age and health factors. See: *Marriage of Wilson*
2 (1988) 201 Cal. App. 3d, 247 Cal. Rptr. 522 and *Marriage of Heistermann* (1991)
3 234 Cal. App. 3d 1195, 286 Cal. Rptr. 127. In conducting this balancing
4 consideration, the Court finds:

5 **35. Section 4320(i) Impact of Domestic Violence Consideration of Emotional**
6 **Distress Resulting from Domestic Violence Suffered by Supported Party**
7 X

8 **36. Section 4320(j) Tax Consequences to Supported Party**

9 Spousal support is typically taxable to the recipient and deductible to the recipient.
10 See: *Internal Revenue Code Section 71*. As set forth in the attached DissoMaster
11 TM printouts showing the gross amount of the deductible support payment, the net
12 benefit to the support recipient and the net cost of the support payor is presented.
13 However, in the preparation of such calculation, including any and all intermediate
14 trial runs before reaching a final conclusion, prior to entering any data the Court
15 accessed the program's "Settings" menu; and selected the option for "Guideline
16 deductible spousal support" to "exclude" thereby blocking the program's ability to
17 render a calculation of so-called guideline or temporary support. At no point in
18 the court's process of making a decision of spousal support was the option ever set
19 to "Include" (See *Marriage of Schulze, supra*. Any trial run that the Court may
20 have performed used either Tactic 1 ("Fix specific dollar support"), or 2
21 ("Minimize taxes, then specify net spendable income for payor"), or 3 (Minimize
22 taxes, then specify net spendable for recipient) as a means of determining the net
23 after tax impact and consequences of various levels of support to each party.

24 **37. Specific Consideration of Tax Consequences**

25 The Court considered the specific tax consequences to the parties and makes the
26 following findings:

27 X

28 **38. Section 4320(k) Balance of Hardships to Each Party**

1 The Court balances the hardship of any order as follows:

2 X

3 **39. Section 4320(m) Criminal Conviction of an Abusive Spouse**

4 X

5 **40. Section 4320(n) Other Factors Court Deems Just & Equitable**

6 The Court considered the following equitable factors in setting support:

7 **41. Award of Custody of Minor Children to Payor Section 4321(b)**

8 X

9 **42. Sufficient Separate Property Estate or Income from Employment Under**
10 **Section 4332 for Childless Party**

11 As for the issue of whether the supported spouse has sufficient assets and income
12 to provide proper support, standing alone and independent of the other
13 considerations under the *Family Code* and decision law *Marriage of Terry* (2000)
14 80 Cal. App. 4th 921, 95 Cal. Rptr. 2d 760, the Court makes the following
15 findings:

16 X

17 **43. Cohabitation Rebuttable Presumption Under Section 4323**

18 X

19 **44. No Recognition of Income of Supported Party's Spouse or Nonmarital**
20 **Partner's Income Under Section 4323(b)**

21 X

22 **45. Section 4324 Attempted Murder Conviction**

23 X

24 **46. Section 4325 Domestic Violence within past 5 years**

25 X

26 **47. Gavron Warning under Section 43309b) & Results of Vocational Training**
27 **Counselor Evaluation**

28 X

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48. Orders for Spousal Support

X

49. General Provisions

49.1. X

49.2. X

Date: X

X

JUDGE OF THE SUPERIOR COURT