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

**In re the Marriage/Matter of:**

**PETITIONER:**

**X,**

**and**

**RESPONDENT:**

**X**

: Case No.: BD x  
:  
: SPOUSAL SUPPORT FACTORS  
:  
: Date: x, 2006  
: Time: 8:30 a.m.  
: Place: Department 79  
: Assigned To: Thomas Trent Lewis

X

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 **1.1. Topical Framework for Analysis Taking Into Account Section 4320**  
5 **and Decisional Law Construing It.**

6 In fixing permanent spousal support<sup>1</sup> (In re Marriage of Burlini (1983) 143  
7 Cal. App. 3d 65, 69, 1991 Cal. Rptr. 541) the Court balanced the relevant  
8 provisions of statutory law and court decisions construing the provisions of  
9 the *Family Code*. While the provisions of *Family Code Section 4320* create  
10 a framework for balancing the relevant factors for an award of permanent  
11 support<sup>2</sup>, certain later enacted provisions of the *Family Code* augment or  
12 clarify other provisions. Hence, this analysis is organized topically rather  
13 than by a mechanical step by step adherence to the provisions of *Family*  
14 *Code Section 4320*. The court makes the following findings:

15 **1.2. Consideration of Temporary Support**

16 In ordering support as provided herein the Court conducted a complete  
17 analysis of permanent support. Permanent support as awarded herein was  
18 not based upon any amount of temporary support ordered or denied. In Re  
19 Marriage of Schulze (1997) 60 Cal. App. 4th 519, 70 Cal. Rptr. 2d 488.

20 The Court did consider the amount and duration of temporary support as

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21  
22 <sup>1</sup> 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 <sup>2</sup> 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 ordered and paid as a factor under *Family Code Section 4320(n)*. The Court  
2 did not fix support by mere reliance on temporary support In Re Marriage  
3 of Zywiciel (2000) 83 Cal. App. 4th 1078, 100 Cal. Rptr. 2d 242; nor did  
4 the Court consider or rely upon any “guideline amount” of temporary  
5 support by reference to the “Santa Clara Guideline” In re Marriage of  
6 Burlini(1983) 143 Cal. App. 3d 65, 191 Cal. Rptr. 541.

### 7 **1.3. Weighing of Various Support Determining Factors**

8 With the purpose of accomplishing substantial justice for the parties, the  
9 Court weighed the factors for consideration of support taking into account  
10 the applicable circumstances of the parties. In Re Marriage of Cheriton  
11 (2001) 92 Cal. App. 4th 269, 111 Cal. Rptr. 2d 755; In re Marriage of  
12 Smith (1990) 225 Cal. App. 3d 469, 274 Cal. Rptr. 911.

## 13 **2. Marital Standard of Living**

### 14 **2.1. Findings Regarding Marital Standard of Living under Sections 4320** 15 **and 4332**

#### 16 **2.1.2. In General**

17 Preservation of the Marital Standard of Living is measured against  
18 the practical economic reality that upon dissolution of marriage (or  
19 domestic partnership) many family units are unable to enjoy  
20 precisely the same standard of living. Against this backdrop,  
21 however, the Court is charged with the obligation of not only  
22 making specific findings regarding the Marital Standard of Living,  
23 but also ascertaining the extent to which the Court can create support  
24 rights and assign support responsibilities equitably measured against  
25 the Marital Standard of Living. Case law supports the proposition  
26 that the Marital Standard of Living is not “the absolute measure of  
27 reasonable need. ‘Marital Standard of living’ is merely a threshold or  
28 reference point against which all of the statutory facts may be

weighed (Citations Omitted). It is neither a floor nor a ceiling for a spousal support award (Citations Omitted). The Legislature intended ‘marital standard of living’ to be a general description of the station in life that the parties achieved by the date of separation. Given that the legal standard, ‘marital standard of living,’ is a mere general reference point...” (In Re Marriage of Nelson (2006) ---Cal. Rptr. 3d, 2005 WL 1305186 citing In Re Marriage of Ostler & Smith(1990) 223 Cal. App. 3d 33, 272 Cal. Rptr. 560).

**2.2. Specific Factual Findings With Respect to Standard of Living under Section 4332**

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

Date Filed	Petitioner	Respondent

**2.3. Factual Determinations Regarding Other Circumstances of Marital Standard of Living under Section 4332**

Weighing the relevant and admissible evidence presented at the time of trial, including giving due consideration to the reported expenses of both

1 parties from their above referenced Income and Expense Declarations, the  
2 Court makes the following findings:

- 3 X
- 4 X
- 5 X
- 6 X
- 7 X

8 **2.4. Section 4320(d) Needs of Each Party Based on Marital Standard of**  
9 **Living**

10 **2.4.1. Recipient Party’s Needs In General**

- 11 X
- 12 X

13 **2.4.2. Payor’s Needs In General**

- 14 X
- 15 X

16 **3. Earning Capacity of Parties**

17 **3.1. In General**

18 Analysis of each party’s earning capacity launches inquiries into several  
19 aspects of support. At its core, earning capacity is viewed through the lens  
20 of various factors with slightly different implications and results.

21 **3.2. Earning Capacity Factors Related to Supported Party**

22 **3.2.1. Section 4320(a) - Earning Capacity of Each Party Sufficient to**  
23 **Maintain Standard of Living During Marriage**

- 24 X
- 25 X

26 **3.3. Earning Capacity of Support Recipient**

- 27 X
- 28 X

1           **3.4. Section 4320(a)(1) Marketable Skills of Supported Party**  
2                           **Job Market for Supported Party’s Skills**

3           On the job market for the supported party’s skills the Court finds that:  
4           X

5           **3.5. Special Factors Affecting Earning Capacity of Supported Party**  
6                           **Time & Expense Required for Supported Party to Acquire**  
7                           **Appropriate Education or Training**

8           The Court finds that the time and expense required for the supported party  
9           to acquire appropriate education or training the Court finds that:  
10          X

11          **3.6. Need for Retraining or Education to Acquire More Marketable Skills**

12          As to the issue of whether the supported spouse requires retraining or  
13          education to acquire more marketable skills or employment (In Re  
14          Marriage of Watt (1989) 214 Cal. App. 3d 340, 262 Cal. Rptr. 783), the  
15          Court finds that:

16          **3.7. Section 4320(a)(2)Earnings Impairment of Supported Party**  
17                           **Unemployment During Marriage to Permit Supported Party to Devote**  
18                           **Time to Domestic Duties**

19          As to the issue of whether the supported spouse devoted him/herself to  
20          domestic duties (In Re Marriage of Cheriton (2001) 92 Cal. App. 4th 269,  
21          111 Cal. Rptr. 783), the Court finds that:  
22          X

23          **3.8. Section 4320(b) Supported Party’s Contribution to Education Training**  
24                           **or Career of Supporting Party Under Section 4320(b)**

25          The Court makes the following findings on this issue:  
26          X

27          **3.9. Supporting Party’s Ability To Pay Section 4320(c) Taking into Account**  
28                           **Various Factors**

1                   **3.9.1. Earning Capacity**

2                   While there is no requirement for the Court to consider whether the  
3                   supporting party has willfully avoided fulfilling family support  
4                   obligations through deliberate misconduct (In re Marriage of  
5                   Stephenson (1995) 39 Cal. App. 4th 71, 46 Cal. Rptr. 2d 8),  
6                   however, the Court has considered the ability and opportunity of the  
7                   supporting party to obtain employment that would generate higher  
8                   income. In re Marriage of Reynolds (1998) 63 Cal. App. 4th 1373,  
9                   74 Cal. Rptr. 2d 636 and, Stephenson, supra. On the issue of the  
10                  supporting party’s earning capacity, the Court finds that:

11                  X

12                  **3.9.2. Earned & Unearned Income**

13                  The Court may consider future income from future exercise of stock  
14                  options as provided by In re Marriage of Kerr (1999) 77 Cal. App.  
15                  4th 87, 91 Cal. Rptr. 2d 374, subject to the refining limitations  
16                  described by the holdings of In re Marriage of Pearlstein 137 Cal.  
17                  App. 4th 1361, 40 Cal. Rptr. 3d 910 on the issue of consideration of  
18                  unrealized value of stock in calculation of gross income in child  
19                  support setting. The Court makes the following findings:

20                  X

21                  **3.9.3. Bonus Income**

22                  The Court may consider bonus income in fixing support. In re  
23                  Marriage of Ostler & Smith (1990) 223 Cal. App. 3d 33, 272 Cal.  
24                  Rptr. 560. On the issue of bonus income, the Court makes the  
25                  following findings:

26                  X

27                  **3.9.4. Assets**

28

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

6 X

7 **4. Impact of Asset Division Upon Support**

8 **4.1. In General**

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

14 **4.2. Recipient Party's Separate Property Estate under Section 4321(a)**

15 X

16 **4.3. Recipient Party's Share of Community Property under Section 4321(a)**

17 X

18 **4.4. Section 4320(e) Obligations & Assets Including Separate Property of**  
19 **Each Party**

20 **4.4.1. Recipient Party's Separate Property Assets & Obligations**

21 If the supported spouse has sufficient assets, both from his/her  
22 separate estate and his/her share of the community estate from the  
23 final division of the property, including the income potential from  
24 the estate as a whole, under In re Marriage of Terry (2000) 80 Cal.  
25 App. 4th 921, 95 Cal. Rptr. 2d 760, the Court makes the following  
26 findings:

27 X

28 **4.4.2. Supporting Spouses Separate Property Assts & Obligations**



1 The Court makes the following findings regarding the separate  
2 property assets and obligations of the support payor:

3 X

4 **5. Section 320(f) Duration of Marriage**

5 **5.1. In General**

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

8 **5.2. Displaced Homemaker**

9 Case law supports awards of support taking into account the issue of  
10 whether the supported party is a displaced homemaker

11 **5.3. Unreasonable Delays in Securing Employment**

12 X

13 **6. Section 4320(l) Factors**

14 **6.1. In General**

15 Both case and statute support the proposition that a supported party should  
16 be informed of the Court's expectations regarding the supported party  
17 appropriately contributing to his/her own responsibility to become self  
18 supporting. In re Marriage of Gavron (1988) 203 Cal. App. 3d 705, 250  
19 Cal. Rptr. 148 and as clarified by the holding of In re Marriage of Schmir  
20 (2005) 134 Cal. App. 4th 43, 35 Cal. Rptr. 3d 716, The Court articulates its  
21 expectations about the plan for the supported party to become self-  
22 supporting as follows:

23 **6.2. Goal to Become Self Supporting**

24 X

25 **6.3. Half the length of the Marriage Consideration**

26 X

27 **6.4. Exercise of Discretion Under Section 4336**

28 X

1           **6.5. Section 4336 Considerations**

2                   **Periods of Separation during Marriage**

3                   X

4           **6.6. Facts Rebutting Presumption**

5                   X

6           **6.7. Facts Supporting Determination that Less than 10 year Marriage is**  
7                   **Marriage of Long Duration**

8                   X

9           **6.8. Facts Supporting Determination that Less than 10 year Marriage is**  
10                   **Marriage of Long Duration**

11                   X

12 **7. Duration of Order for Support**

13           Within the range of its broad discretion in fixing the amount and duration of  
14           support (In re Marriage of Smith (1990) 225 Cal. App. 3d 469, 274 Cal. Rptr.  
15           911), including the Court’s power to reserve jurisdiction to award support (In re  
16           Marriage of Beck (1997) 57 Cal. App. 4th 341, 67 Cal. Rptr. 2d 79). Based on the  
17           evidence presented here, the Court makes the following findings and conclusions  
18           regarding the duration of spousal support:

19           **7.1 General Findings**

20                   X

21           **7.2. Order of Indeterminate Duration**

22                   Based on the general findings set forth next above, and for the  
23                   reasons further specified here (In re Marriage of Christie (1994) 28  
24                   Cal. App. 4th 849, 34 Cal. Rptr. 2d 135), the Court makes the  
25                   following findings and conclusions:

26           **7.3. Order for Step Down in Payment of Support**

27                   Where the Court articulates a justifiable expectation that support  
28                   should be downwardly adjusted (stepped down), based on a

1 reasonable inference drawn from the facts concerning an increased  
2 ability of the supported party to provide his or her own support at the  
3 time of the step down (In re Marriage of Richmond (1980) 105 Cal.  
4 App. 3d 352, 164 Cal. Rptr. 381, In re Marriage of Drapeau (201) 93  
5 Cal. App. 4th 1086, 114 Cal. Rptr. 2d 6, In re Marriage of Anninger  
6 (1009) 220 Cal. App. 3d 230, 269 Cal. Rptr. 388, In re Marriage of  
7 Gavron (1988) 203 Cal. App. 3d 705, 250 Cal. Rptr. 148, In re  
8 Marriage of Cheriton (2001) 92 Cal. App. 4th 269, 111 Cal. Rptr. 2d  
9 755, and In re Marriage of Paul (1985) 173 Cal. App. 3d 913, 219  
10 Cal. Rptr. 318), the Court makes the following findings and  
11 conclusions:

#### 12 **7.4. Divestiture of Jurisdiction**

13 On the issue of whether the Court should divest itself of jurisdiction to  
14 award support (In re Marriage of Baker (1992) 3 Cal. App. 4th 491, 4 Cal.  
15 Rptr. 2d 553), the Court makes the following findings and conclusions:  
16 X

#### 17 **7.5. Shifting the Burden of Proof to the Supported Party**

18 As to whether the Court shall shift the burden of proof to the supported  
19 party (In re Marriage of Huntington (1992) 10 Cal. App. 4th 1513, 14 Cal.  
20 Rptr. 2d 1), the Court makes the following findings and conclusions:  
21 X

### 22 **8. Section 4320(g) Supported Party's Ability to Engage in Gainful Employment** 23 **Without Unduly Interfering with the Interests of Dependent Children in** 24 **Custody of Supported Spouse.**

25 Applying the principle of placing the needs of the minor children of the marriage  
26 ahead of the supported party's ability to engage in gainful employment, including  
27 the deferral of employment or training, including the special needs of the children  
28

1 of this relationship (In re Marriage of Rosan (1972) 25 Cal. App. 3d 885, 101 Cal.  
2 Rptr. 295, the Court finds that:

3 X

4 **8.1. Section 4320(h) Age & Health of Parties**

5 **8.2. Age & Health Weighed Against Other Factors**

6 While the age and health of the parties is a factor in setting support,  
7 decisional law prohibits the Court from ignoring the other factors in setting  
8 support, which must be weighed in conjunction with age and health factors.  
9 See: In re Marriage of Wilson (1988) 201 Cal. App. 3d, 247 Cal. Rptr. 522  
10 and In re Marriage of Heistermann (1991) 234 Cal. App. 3d 1195, 286 Cal.  
11 Rptr. 127. In conducting this balancing consideration, the Court finds:

12 **8.2.1. Age & Health of Supported Party**

13 X

14 **8.2.2. Age & Health of Support Paying Party**

15 X

16 **9. Section 4320(i) Impact of Domestic Violence**

17 **9.1. Consideration of Emotional Distress Resulting from Domestic Violence**  
18 **Suffered by Supported Party**

19 X

20 **9.2. Consideration of Emotional Distress Resulting from Domestic Violence**  
21 **Suffered by Payor**

22 X

23 **10. Section 4320(j) Tax Consequences**

24 **10.1. Tax Consequences to Supported Party**

25 Spousal support is typically taxable to the recipient and deductible to the  
26 recipient. See: *Internal Revenue Code Section 71*. As set forth in the  
27 attached Dissomaster™ printouts showing the gross amount of the  
28 deductible support payment, the net benefit to the support recipient and the

1 net cost of the support payor is presented. However, in the preparation of  
2 such calculation, including any and all intermediate trial runs before  
3 reaching a final conclusion, prior to entering any data the Court accessed  
4 the program’s “Settings” menu; and selected the option for “Guideline  
5 deductible spousal support” to “exclude” thereby blocking the program’s  
6 ability to render a calculation of so-called guideline or temporary support.  
7 At no point in the court’s process of making a decision of spousal support  
8 was the option ever set to “Include” (See In re Marriage of Schulze, supra.  
9 Any trial run that the Court may have performed used either Tactic 1 (“Fix  
10 specific dollar support”, or 2 (“Minimize taxes, then specify net spendable  
11 income for payor”), or 3 (Minimize taxes, then specify net spendable for  
12 recipient) as a means of determining the net after tax impact and  
13 consequences of various levels of support to each party.

14 **10.2. Tax Consequences to Payor**

15 X

16 **11. Section 4320(k) Balance of Hardships to Each Party**

17 **11.1. Balancing Hardships of Supported Party**

18 X

19 **11.2. Balancing Hardships of Support Paying Party**

20 X

21 **12. Section 4320(m) Criminal Conviction of an Abusive Spouse**

22 **12.1. By Supported Party**

23 X

24 **12.2. By Payor**

25 X

26 **12.3. Section 4325 Considerations**

27 X

28 **13. Section 4320(n) Other Factors Court Deems Just & Equitable**

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**SPOUSAL SPOUSAL FACTORS**

1           **13.1. General Considerations**

2           X

3 **14. Other Considerations for Modifying or Termination Support**

4           **14.1. Award of Custody of Minor Children to Payor Section 4321(b)**

5           X

6           **14.2. Sufficient Separate Property Estate or Income from Employment**  
7           **under Section 4332 for Childless Party**

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

13          X

14 **15. Cohabitation Rebuttable Presumption under Section 4323**

15          **15.1. No Requirement To Show Holding Out as Husband & Wife**

16          X

17          **15.2. Facts Establishing Cohabitation**

18          X

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

21          **16.1. Findings**

22          X

23 **17. Section 4324 Attempted Murder Conviction**

24          X

25 **18. Section 4325 Domestic Violence within past 5 years**

26          X

27 **19. Gavron Warning under Section 43309b)**

28          X

1 **20. Results of Vocational Training Counselor Evaluation under Section 4331**

2 X

3 **21. General Provisions**

4 **21.1. X**

5 **21.2. X**

6 **21.3. X**

7 **21.4. X**

8 **21.5. X**

9  
10 Date: x

11  
12 \_\_\_\_\_  
13 **THOMAS TRENT LEWIS**  
14 **JUDGE OF THE SUPERIOR COURT**  
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