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6 ATTORNEYS FOR VICTIMS:
JILL RASCON; JOSHUA RASCON;
7 AUSTIN RASCON; LEXI RASCON a minor;
8 MADISON RASCON, a minor

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 CRIMINAL DIVISION

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 01 CRAIG LIGHTNER (10/13/1694)(BK#
17 3708867),

18 Defendant.

CASE NO. NA096896

**VICTIMS' BRIEF IN SUPPORT OF
19 RESTITUTION ORDER**

RESTITUTION HEARING

Date: December 29, 2014

Time: 8:30 A.M.

Department: Dept. S21

**ESTIMATE TIME FOR HEARING: 60
20 MINUTES**

21 **COMES NOW THE VICTIMS JILL RASCON, JOSHUA RASCON, AUSTIN RASCON**
22 **AND MADISON AND LEXI RASCON by and through their Guardian ad Litem, JODI ROTH**
23 **and hereby submit this Restitution Brief in Support of Claim for Restitution**

24 **I. INTRODUCTION**

25 Defendant, Craig Lightner, plead guilty to Penal Code Section 192(b) and Fish and Game Code
26 Section 8598(b)(1) related to death of Earnest Mark Rascon, DOB 2/24/65, ("Mark Rascon") July 27,
27 2012. As such, the Court must order payment of restitution for economic losses. Penal Code Section
28 1202.4; Welfare & Institution Code Section 730.6; see Cal. Const. Art. I, Section (b)(3)(A).

1 Jill Rascon is the widow of Mark Rascon. Joshua and Austin Rascon are adult issue of Mark
2 Rascon from a prior marriage. Madison and Lexi Rascon are minor children of Jill and Mark Rascon
3 (Collectively, “victims”).¹

4 The victims in this matter are entitled to be made whole related to economic losses. This Brief
5 addresses the victims’ rights to restitution related to Mr. Rascon’s future earnings through work life
6 expectancy and Loss of Household Services through life expectancy. This Brief also addresses the victims’
7 rights to attorney’s fees and costs as well as interest. It is anticipated the District Attorney’s Office will
8 submit additional documentation for other components of recoverable restitution.

9 II. LEGAL ARGUMENT

10 A. Right to Private Counsel

11 The victims have the right to have their attorney appear at the restitution hearing and to be heard
12 through counsel on the issue of restitution. Cal. Const. art I, §28(b)(8), (c)(1). The victims’ attorney may
13 present evidence and argument at the hearing so long as the prosecutor is present and has the opportunity
14 to speak if the victims’ or their attorney’s position diverges from the People’s interests. See *People v Smith*
15 (2011) 198 Cal.App.4th 415, 439–440.

16 B. Scope of Restitution

17 Penal Code section 1202.4 begins: "It is the intent of the Legislature that a victim of a crime who
18 incurs *any economic loss* as a result of the commission of a crime shall receive restitution directly from any
19 defendant convicted of that crime." (*Id.*, subd. (a)(1), italics added.) It requires also that the restitution
20 order "shall be of a dollar amount that is sufficient to *fully* reimburse the victim or victims for *every*
21 determined economic loss incurred as the result of the defendant's criminal conduct." (*Id.*, subd. (f)(3),
22 italics added.) Additionally, "[t]he court shall order *full restitution* unless it finds compelling and
23 extraordinary reasons for not doing so, and states those reasons on the record." (*Id.*, subd. (g), italics
24 added.)

25 An aggrieved spouse and decedent’s issue are entitled to recover economic loss they would have
26

27 ¹ Jodi Roth has been appointed Guardian ad Litem for Madison and Lexi Rascon. Declaration of Michael E. Gatto, Esq. in
28 Support of Victims’ Brief for Restitution at paragraph 4 (Dec of MEG at p. 4).

1 received from decedent. *People v Giordano* (2007) 42 Cal.4th 644, 68 Cal.Rptr. 3d 51 attached hereto as
2 Exhibit A. Such losses include decedent's income and value of household services he rendered and would
3 have rendered into the future. In concluding that a surviving spouse may receive as direct restitution the
4 economic loss attributable to a criminal act that resulted in the death of his or her spouse, looking to
5 wrongful death case law enabled us to see the surviving spouse's economic loss as a common category of
6 economic loss. *Id.* at 665. This case law is also useful in demonstrating that the surviving spouse's
7 economic loss is best described as a loss of economic *support*. The purpose of a wrongful death judgment is
8 "to provide the amounts of *future support* which the beneficiaries would have received in the future had
9 decedent lived" (*Canavin, supra*, 148 Cal.App.3d at p. 521, 196 Cal.Rptr. 82, italics added), and "[w]here, as
10 here, decedent was a husband and father, a significant element of damages is the loss of financial benefits
11 he was contributing to his family by way of *support* at the time of his death and that *support* reasonably
12 expected in the future." (*Id.* at pp. 520-521, 196 Cal.Rptr. 82, italics added.) Additionally, the jury
13 instructions for calculating wrongful death damages, which address both economic and noneconomic
14 damages, describe as "economic loss" the "financial *support*," that the decedent would have contributed to
15 the surviving heir or family member. (BAJI No. 14.50, italics added; CACI No. 3921 attached heret o as
16 Exhibit B.)

17 **C. Nature of Restitution Hearing: Evidentiary Standards and Burden**

18 The evidentiary requirements for establishing a victim's economic losses are minimal. The Court
19 must base its determination on the "amount of loss claimed by the victim or victims or any other showing
20 to the Court." Pen C §1202.4(f). A victim may submit estimates of losses. *People v Goulart* (1990) 224
21 Cal.App. 3d 71, 82-83, 273 Cal.Rptr. 477.

22 The amount of restitution must be proved by a preponderance of the evidence. *People v Gemelli*
23 (2008) 161 Cal.App.4th 1539, 1542-1543, 74 Cal.Rptr.3d 901. Once the victim makes a prima facie
24 showing of economic losses, the burden shifts to the defendant to disprove the amount of the claimed
25 losses. *Id.* at 1543. The defendant has the burden of showing that the restitution recommendation in the
26 probation report or the victims' estimates are inaccurate. *People v Foster* (1993) 14 Cal.App.4th 939, 946, 18
27 Cal.Rptr. 2d 1; *People v Hartley* (1984) 163 Cal.App. 3d 126, 130, 209 Cal.Rptr. 131.

28 Documentary evidence such as bills, receipts, repair estimates, insurance payment statements,

1 payroll stubs, business records, and similar documents relevant to the value of stolen or damaged property,
2 medical expenses, and wages and profits lost may not be excluded as hearsay evidence. Pen C §1203.1d(d).
3 The victim must present evidence showing that there were losses and that the losses were caused by the
4 crime committed by the defendant. *People v Fulton* (2003) 109 Cal.App.4th 876, 885–886, 135 Cal.Rptr.2d
5 466.

6 **D. Defendant has no right to a jury trial nor to confront and cross examine witnesses related**
7 **to Restitution**

8 Defendant has no Sixth Amendment right to a jury trial on restitution issues. *People v. Chappelone*,
9 (2010) 183 Cal. App.4th 1159. Additionally, defendant has no right to confront and cross examine
10 witnesses at restitution hearing. *People v. Cain*, (2000) 82 Cal.App.4th 81. Notwithstanding, victims submit
11 the issue of cross examination and any limitations to the discretion of the Court.

12 **E. Lost Earnings**

13 Mark Rascon earned on average \$72,568.80 over the four plus years immediately preceding his
14 death. See Exhibit 1 to Dec. of MEG at p.8. The court may order the defendant to pay restitution to
15 compensate the spouse of a deceased victim for the spouse’s future economic losses attributable to the
16 deceased victim’s death. *Giordano* at 665. In support of its decision, the Supreme Court looked to the
17 state’s wrongful death statutes that allow a spouse of a person wrongfully killed to seek compensation for
18 the loss of financial benefits the decedent was contributing to support his or her family at the time of the
19 decedent’s death and the loss of that that support that was reasonably expected in the future. *Id.* The Court
20 stated that when the Legislature enacted Pen C §1202.4, “it did so with the presumed knowledge that
21 courts have long understood that a surviving spouse incurs an economic loss upon the death of his or her
22 spouse.” *Id.* at 659.

23 In calculating the loss of support, the trial court should consider the earning history of the
24 deceased spouse, the age of the survivor and decedent, and the degree to which the decedent’s income
25 provided support to the survivor’s household. These factors are not an exhaustive list; the trial court has
26 discretion to be guided by the particular factors in each individual claim. *Id.* at 665.

27 Mark Rascon had a work life expectancy of nineteen years at the time of his death. Victims are
28 entitled to recover full restitution for loss of earning’s capacity through work life expectancy. *People v.*

1 *Millard*, (2009) 175 Cal.App.4th 7, 29 – 30 attached hereto as Exhibit C. In *Millard*, the victim had a 17 year
2 future work life expectancy. The victim presented evidence injuries from auto v. motorcycle collision
3 caused by drunk driver precluded future employment. The trial court awarded \$750,000.00 in future loss
4 earnings, which was upheld on appeal. Notably, the Court made no reduction for determination of present
5 value of the victim’s loss.

6 Here, given Mark Rascon’s average earnings for four plus years prior to demise multiplied by his
7 work life expectancy yields lost earnings of (\$72,568.80 x 19) **\$1,378,807.02**.

8 **F. Loss of Household Services**

9 Jill Rascon and her minor children have been deprived of the household services Mark Rascon
10 would have provided but for defendant’s criminal acts. CACI 3921 requires an award of loss of household
11 services in such circumstances. Rendition of household services has economic value, the loss of which is
12 recoverable as restitution for death of a spouse. *Giordano* at 665. At the time of his death, Mark Rascon
13 was regularly performing household services and testimony will be presented at hearing bearing on the
14 activities, time estimate and reasonable value of such services.

15 **G. The Victims are Entitled to Restitution for Attorney’s Fees and Costs**

16 The victims have retained an economist and an attorney to establish evidence of restitution. Penal
17 Code §1202.4(f)(3)(H) mandates restitution for actual and reasonable attorneys’ fees “and other costs of
18 collection accrued by a private entity on behalf of the victim.” See *People v Maheshwari* (2003) 107 CA4th
19 1406, 1409–1411, 132 CR2d 903; *In re Imran Q.* (2008) 158 CA4th 1316, 1319–1321, 71 CR3d 121

20 Here, victims’ counsel has spent 4 hours researching and preparing this brief. Victims’ counsel
21 anticipates spending 14 hours preparing for; traveling to and from and conducting this hearing. At an
22 hourly rate of \$500.00, victims have incurred \$9,000.00 in attorney’s fees which should be awarded as
23 restitution.² In addition, the victims were forced to incur costs to retain an economist to present evidence
24 for purposes of calculation of future earnings loss and loss of household services. The victims engaged
25 Darryl Zengler, a forensic economist to review evidence; prepare; travel to and from; and testify at the
26 restitution hearing.

27 _____
28 ² Victims request the Court retain Jurisdiction to conduct a further restitution hearing following conclusion of the civil case
when additional attorney’s fees and costs can be determined should prosecution be successful, crediting Defendant for any
attorney’s fees awarded by instant application.

1 **H. Interest**

2 The court must award interest on a restitution order under Pen C §1202.4 at the rate of 10 percent
3 per year. Pen C §§1202.4(f)(3)(G), 1214.5. The court has the option of awarding interest from the date of
4 sentencing or loss. Pen C §1202.4(f)(3)(G). Here, all of victims' losses flow from a single event which
5 occurred just over 29 months ago. The victims hereby request the Court order interest at a rate of 10
6 percent per year from the date of Mark Rascon's death, July 27, 2012 to the amount ordered as restitution.

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1 **I. Total Requested Restitution**

2 **TABLE OF DAMAGES**

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4 Lost Wages	\$1,378,807.02
5 Loss of Household Services (To be determined at Hearing)	
6 Interest (10% from date of loss: 7/27/12. Multiply Lost Wages and Loss of Household Services by 1.24. 10% for 29 months)	
7 Attorney's Fees	\$9,000.00
8 Ancillary Restitution Amounts (To be submitted by Probation)	
9 Charges for Forensic Economist (To be determined at Hearing)	
10 Total Restitution	

11

12 **III. CONCLUSION**

13
14 Based upon the forgoing, the victims respectfully request the Court order restitution for lost
15 earnings and lost household services due to defendant's criminal conduct. The victims also request the
16 Court award as restitution attorney's fees and costs. Finally, the victims request imposition of interest at a
17 rate of 10% per year from July 27, 2012.

18 Dated: December 22, 2014

Respectfully submitted,
RAINS LUCIA STERN, PC

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20 _____
21 Michael E. Gatto
22 Attorney for Victims:
23 JILL RASCON, individually and as Personal
24 Representative of Decedent ERNEST MARK
25 RASCON, his Estate, and his beneficiaries;
26 JOSHUA RASCON; AUSTIN RASCON; LEXI
27 RASCON a minor; MADISON RASCON, a minor
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1 **PROOF OF SERVICE**

2 I am employed in the City of Pleasant Hill, State of California. I am over 18 years of age and not a
3 party to this action. My business address is Rains Lucia Stern, PC, 2300 Contra Costa Blvd., Suite 500,
Pleasant Hill, California 94523.

4 On the date below I served a true copy of the following document(s):

5 **VICTIMS' BRIEF IN SUPPORT OF RESTITUTION ORDER**

6 on the interested parties to said action by the following means:

7 **(BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate
8 postage, for collection and mailing following our ordinary business practices. I am readily familiar
9 with this business's practice for collecting and processing correspondence for mailing. On the
10 same day that the correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

11 **(BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed
12 envelope with delivery charges to be billed to Rains Lucia Stern, P.C., for delivery by UPS
overnight delivery service to the address(es) shown below.

13 **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile
14 transmission from facsimile number (925) 609-1690 to the attorney(s) or party(ies) shown below.

15 **(BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said
16 envelope to an employee of First Legal for guaranteed, same-day delivery to the address(es)
17 shown below.

18 **(BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or
19 parties shown below

20 **(BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement
of the parties to accept service by e-mail or electronic transmission, I caused the documents to be
sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable
period of time, after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

21 Los Angeles County District Attorney's Office Robert Sheahen, Esq.
22 Carol Rose, Deputy District Attorney Attorney for Craig Lightner
23 275 Magnolia Ave. Room 3195 9025 Wilshire Blvd Ste. 500
Long Beach, CA 90802 Beverly Hills, CA 90211

24
25 I declare under penalty of perjury under the law of the State of California that the foregoing is true
and correct.

26 DATED: December 22, 2014

27 _____
Sarah Steffen

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