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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Manisha Palla,

Plaintiff,

v.

L M SPORTS, INC. dba LAKESIDE
MARINA and dba ACTION
WATERSPORTS OF TAHOE; L T
LEASING, INC.; PAUL GARCIA;
and DOES 1-50, inclusive,

Defendants.

No. 2:16-cv-02865-JAM-EFB

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW-DAMAGES PHASE**

AND RELATED ACTIONS.

Following an accident on Lake Tahoe that resulted in an above the knee amputation of her right leg, Plaintiff Manisha Palla brought a negligence claim against L M Sports, Inc.; L T Leasing, Inc.; and Paul Garcia. L M Sports and L T Leasing then filed a limitation of liability action under 46 U.S.C. §§ 30505 et seq. The Court consolidated the two cases, then bifurcated the issues of liability and damages. See Related Case Order, ECF

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1 No. 12; Palla v. L M Sports, No. 2:16-cv-02975-JAM-EFB, 2019 WL
2 427300 (E.D. Cal. Feb. 4, 2019).

3 Garcia initially participated in the suit. But since the
4 withdrawal of his attorney in June 2018, ECF No. 72, Garcia has
5 only made one appearance with the Court: on March 4, 2019, when
6 he testified during the liability phase of the trial.

7 After conducting a ten-day bench trial on the issue of
8 liability, the Court issued findings of fact and conclusions of
9 law. ECF No. 284. Ultimately, the Court found Garcia and L M
10 Sports's negligence caused Palla's injuries. Id. 35-36. It
11 further found Garcia was 80% at fault for Palla's injuries and
12 that L M Sports was 20% at fault. Id. at 31-33. Finally, the
13 Court concluded L M Sports failed to show it lacked knowledge of
14 the negligent conditions that gave rise to Palla's injuries. Id.
15 at 33-36. As a result, it was not entitled to the limitation on
16 liability afforded by section 30505(b). Id. L M Sports appealed
17 the Court's decision in this first phase of the lawsuit. ECF No.
18 287.

19 Having waived her right to a jury trial, the Court proceeded
20 to hold a nine day bench trial on the issue of Palla's damages.
21 See ECF Nos. 309, 345. Palla and L M Sports offered in-person
22 and deposition testimony from Palla, four people who were on the
23 boat when the accident occurred, a first responder, a treating
24 physician, Palla's mother, Palla's friend and co-worker, and
25 seven expert witnesses. Numerous exhibits were also admitted at
26 trial by both parties. The Court has considered the documentary
27 evidence, the testimony of each witness, as well as the parties'
28 trial briefs, their joint pretrial statement, and their

1 stipulations. See ECF Nos. 316, 335, 336, 329.

2
3 I. FINDINGS OF FACT

4 **Palla's Background**

5 1. Manisha Palla was born to Suvarana and Sukender Palla
6 on May 8, 1994 in San Jose, California.

7 2. She was raised by her maternal grandmother in
8 Hyderabad, India and Portland, Oregon for the first five years of
9 her life.

10 3. Palla spent the rest of her childhood in Portland,
11 Oregon with her mother, father, and younger brother.

12 4. Growing up, Palla maintained a strong academic record,
13 had lots of friends, and participated in several extracurricular
14 activities, including basketball, volleyball, and taekwondo.

15 5. Palla travelled extensively—both domestically and
16 internationally.

17 6. Palla testified that, before her accident, she never
18 had hesitations about traveling; nor did she feel like there were
19 physical limitations on what she could do.

20 7. For example, Palla had been backpacking, skydiving, and
21 regularly went camping with her family.

22 8. After Palla graduated from high school, she moved to
23 Atlanta, Georgia, where she attended Emory University.

24 9. At Emory, she continued to lead an outgoing and active
25 lifestyle.

26 10. Palla graduated from Emory when she was twenty-two and
27 began working at System Application Products ("SAP").

28 11. Palla was excited to have a job in an internationally-

1 focused company, and eager to make her way as a woman in an
2 industry dominated by men.

3 12. She met Mariah Koeltl during the SAP interview process.

4 13. Palla and Koeltl became fast friends when SAP hired
5 them to both work in its Chicago office.

6 14. They saw each other at work nearly every day.

7 15. They ran together; planned trips together; went to
8 social gatherings together; and talked about their hopes for the
9 future.

10 **The Accident on Lake Tahoe**

11 16. On July 24, 2016 Palla went to Lake Tahoe with a group
12 of her SAP co-workers.

13 17. The group went tubing on the lake with a boat and an
14 innertube they rented from L M Sports.

15 18. After Palla took her turn tubing, she swam back to the
16 boat.

17 19. When re-boarding, her legs were struck by the boat's
18 propellers.

19 20. Palla's screams alerted people on the boat of her
20 injuries.

21 21. She felt excruciating pain in one of her legs, but no
22 sensation in the other.

23 22. One of her legs had been struck by the propeller, while
24 the other was completely lodged between the two counter-rotating
25 propeller blades.

26 23. Palla reached down to touch one of her legs—it felt
27 "squishy in some parts" and "hard in other parts." She testified
28 that it did not feel like an "in tact human leg."

1 24. Efe Ozyurt, Regan Roberts, Sean O'Dea and Alvaro
2 Gilsanz Herranz jumped in the water to help Palla.

3 25. They were unable to free Palla's leg from the blades.

4 26. The police and the boat rental company were called for
5 help.

6 27. While awaiting help, Ozyurt and O'Dea held Palla's face
7 out of the water to prevent her from drowning.

8 28. Notwithstanding their efforts, Palla's face still sunk
9 below the water several times.

10 29. Palla testified that she thought she was going to die.

11 30. When Deputy Les Lovell arrived at the scene, Palla was
12 "paling gray," nearing unconsciousness.

13 31. Lovell and his partner freed Palla from the propellers
14 and handed her over to Marine One.

15 32. When Lovell removed Palla from the water, she was
16 unconscious and no longer bleeding.

17 33. At that point, Lovell believed Palla was "either dead
18 or in grave shape."

19 **Palla's Stay at Renown Memorial Hospital**

20 30. Palla did not regain consciousness until the morning
21 after the accident.

22 31. She was alone when she awoke, intubated, at Renown
23 Memorial Hospital.

24 32. Palla got the attention of a nurse outside her room.

25 33. The nurse came in and pulled back the blanket covering
26 Palla; Palla saw for the first time that the doctors had
27 amputated her right leg above the knee.

28 34. Palla's mother ("Dr. Palla") went to her daughter's

1 hospital room once she learned Palla was conscious.

2 35. Palla wrote her mother notes, asking whether she would
3 still be able to accomplish the goals she once had.

4 36. Palla feared she would never run again; that she would
5 never get married; that she would face discrimination in India;
6 and that she would lose her job.

7 37. Dr. Palla could not provide her daughter reassurance;
8 they both cried.

9 38. Four days after the amputation of her right leg, Palla
10 began experiencing severe phantom pain.

11 39. Palla testified her phantom pain felt like
12 electrocutions where her lower right leg used to be.

13 40. By July 31, Palla was experiencing phantom pain all
14 hours of the day.

15 41. Palla returned to Portland, Oregon on August 4, 2016.

16 42. Her mother learned how to change Palla's bandages and
17 watch for eschar so Palla could recover at home rather than at a
18 rehabilitation center.

19 **Palla's Rehabilitation in Portland, Oregon**

20 43. Palla spent five months recovering at home in Portland,
21 Oregon.

22 44. Her phantom pain improved during this period of time
23 but never went away completely.

24 45. Palla also had trouble sleeping.

25 46. Despite taking anti-anxiety and anti-depressant
26 medication, she consistently suffered from nightmares where she
27 would effectively re-live the accident on Lake Tahoe.

28 47. While in Portland, Palla required her mother's help to

1 get out of bed, go to the restroom, shower, change her wound
2 dressings, and prevent blood clots from forming.

3 48. Palla went to a hypnotist once while she was in
4 Portland.

5 49. She did not, however, see a therapist.

6 50. During the first month of her rehabilitation, Palla
7 developed necrotic tissue on her residual limb.

8 51. Necrotic tissue is tissue that has died because it
9 lacks sufficient blood supply—it causes skin discoloration and
10 poses risks of infection.

11 52. Palla's doctor recommended non-surgical treatments for
12 Palla's necrosis.

13 53. When these non-surgical treatments failed, Dr. Palla
14 took her daughter to Dr. Samuel Vincent Bartholomew.

15 54. Bartholomew recommended surgeries to cut out the dead
16 tissue ("debridement") and then graft healthy tissue onto the
17 open wound.

18 55. Bartholomew performed the first debridement surgery on
19 September 6, 2016 and conducted two more debridements over the
20 next three weeks.

21 56. Between each of the debridements, Dr. Palla had to
22 change the dressings on Palla's wound several times a day.

23 57. Each time Dr. Palla put new gauze on the wound, it
24 dried to the tissue and fat below.

25 58. When removed, the gauze ripped apart from the
26 underlying wound.

27 59. Palla testified this was an extremely painful process—
28 both because of the physical pain and because of the guilt she

1 felt for causing her mom so much anguish.

2 60. On September 27, Bartholomew performed a successful
3 skin graft.

4 61. He used skin from Palla's upper left thigh as the donor
5 site.

6 62. Palla now has a large, rectangular scar in that area.

7 63. While recovering, Palla largely spent her time in bed.

8 64. She also spent some time writing.

9 65. She published two blog posts: one called "Opportunity
10 of Adversity" and one called "38.991° N, 102.010° W".

11 66. Later, one of Palla's friends from Emory interviewed
12 her for People magazine.

13 67. In 2017, People published the interview in an article
14 titled, "I lost my leg . . . and couldn't feel luckier."

15 68. Palla testified that her interview and blog posts were
16 attempts to candidly explain where she was in her recovery
17 process, while also being hopeful and inspirational.

18 69. Eventually, Palla was fitted for a prosthetic leg.

19 70. The first time she saw her prosthesis, she cried.

20 **Palla's Return to Work in Chicago**

21 71. Bartholomew released Palla to work on December 5, 2016.

22 72. Notwithstanding her mother's reluctance, Palla insisted
23 upon returning to work the following month.

24 73. In January 2017, Palla attended SAP's Field Meeting
25 Kickoff in Las Vegas, Nevada.

26 74. Palla then returned to work in SAP's Chicago office.

27 75. Upon returning, Palla began and completed training with
28 a new class of SAP employees.

1 76. She received a title change at same time as her
2 colleagues in that class.

3 77. Initially, Palla wore dresses and skirts to work; this
4 was consistent with how she dressed before losing her leg and
5 allowed her to more comfortably move around with her prosthesis.

6 78. Eventually, however, she started dressing to hide her
7 prosthesis—an attempt to avoid stares and invasive questions from
8 clients, co-workers, and strangers.

9 79. Koeltl was still working in the Chicago office when
10 Palla returned to work.

11 80. Koeltl has never heard anyone speak poorly of Palla's
12 performance at work.

13 81. Even so, Koeltl was cognizant of the many ways Palla
14 had changed since her accident.

15 82. Koehltl testified Palla had trouble traveling by plane,
16 attended fewer social events, walked with an uneven stride, and
17 generally moved around more slowly than she did before her
18 accident.

19 83. The pain in Palla's residual limb and in her
20 contralateral leg prevented, and continues to prevent, her from
21 walking more than a few blocks without taking a break.

22 84. As a result, Palla began using rideshare applications
23 to get to places to which she used to walk.

24 85. She also began attending fewer social events.

25 86. Palla testified that it takes more energy and advanced
26 planning for her to go to social gatherings than it did before
27 she lost her leg.

28 87. She sometimes fears that going out with friends will

1 deprive her of the energy she needs to do her job well.

2 88. Palla's main priority is keeping her job with SAP.

3 **Palla's Move to Philadelphia**

4 89. Palla eventually applied for a transfer to SAP's
5 Philadelphia, Pennsylvania office.

6 90. Following an interview process, SAP awarded Palla the
7 position.

8 91. Palla now lives in a high-rise studio apartment about
9 forty-five minutes away from SAP's offices in Newtown Square.

10 92. The apartment has an elevator and covered parking.

11 93. Palla takes advantage of online delivery services to
12 get her groceries but can do most other household chores on her
13 own.

14 94. As a senior account executive, Palla manages around
15 twenty-five accounts in a territory that ranges from Maine to
16 Virginia.

17 95. SAP requires its senior account executives to meet
18 quarterly and annual quotas.

19 96. Palla testified that if an account executive fails to
20 meet her quotas, SAP may fire her or reassign part of her
21 territory.

22 97. Palla understands that she is entitled to
23 accommodations through her employer.

24 98. She nonetheless fears that taking time off from work
25 for appointments related to her injury places her job with SAP at
26 risk.

27 99. Palla has not requested any accommodations from SAP.

28 100. She can generally travel to her most-frequented sites

1 by train; in Chicago she had to travel by plane for many of her
2 client visits.

3 **Palla's Post-Accident Travels**

4 101. Palla has travelled domestically and internationally
5 since her accident.

6 102. When possible, Palla prefers to travel by car and by
7 train.

8 103. Palla drives with her left foot by bending her residual
9 limb back toward her and crossing her left leg over her residual
10 limb toward the gas pedal.

11 104. She stops at least once every hour because of the pain
12 this position causes her residual limb.

13 105. Palla knows it is possible to modify her car so she
14 could more easily drive with her left foot.

15 106. She testified, however, that she does not want to get
16 into the habit of driving in a car with modifications because she
17 often has to drive unmodified rental cars when traveling for her
18 job.

19 107. When Palla travels by plane, TSA requires her to
20 undergo invasive, additional security checks.

21 108. Palla testified that TSA agents must see the top of her
22 prosthetic device before she passes through security.

23 109. This process requires her to go to a separate room and
24 partially undress every time she goes to the airport.

25 110. It is also difficult for Palla to travel by plane
26 because (a) she often needs to walk long distances between gates,
27 (b) changes in elevation cause swelling in her residual limb; and
28 (c) the size of airplane restrooms prevents her from effectively

1 removing or adjusting her prosthetic if necessary.

2 111. Palla has never requested accommodations for her
3 disability at an airport in anticipation of a flight and does not
4 have specific plans to do so in the future.

5 112. Palla has traveled to Germany once for work.

6 113. On that trip, Palla's prosthesis stopped fitting
7 correctly, leaving her unable to walk.

8 114. She had to return to Chicago early.

9 115. Palla has also taken personal trips to Iceland,
10 England, Switzerland, France, and Colombia.

11 116. Although she was not able to participate in all the
12 activities she would have done before her accident, Palla did not
13 have to end any of these trips early because of her disability.

14 117. Palla has not visited India since her accident.

15 118. Palla's mother, on the other hand, last visited India
16 in June 2018.

17 119. Dr. Palla found that only a very small percentage of
18 buildings were handicap-accessible.

19 **Palla's Recurring Issues**

20 120. Palla continues to experience intermittent phantom
21 pain.

22 121. Palla also experiences fatigue in her residual limb and
23 contralateral leg, instability in her contralateral knee, and
24 pain in her hip, back, and contralateral ankle.

25 122. Palla stopped taking prescription pain medication in
26 January 2017 because she feared developing a dependency.

27 123. She now only takes Advil and Tylenol for phantom pain
28 relief.

1 124. Palla does not work out with the same consistency she
2 did before her injury.

3 125. Working out causes strain on her contralateral knee
4 that makes it difficult for her to keep up with the physical
5 demands of her job.

6 126. Palla has gone to physical therapy in the past but does
7 not currently go to physical therapy.

8 127. Moreover, she does she have specific plans to try
9 physical therapy again in the future.

10 128. Palla has tried other physical modalities to address
11 the physical pain in her hips, back, and contralateral joints.

12 129. Palla does five- to ten-minute stretching exercises at
13 home to help manage her pain.

14 130. She has also tried massage therapy and acupuncture.

15 131. Palla can reduce the pain in her residual limb by
16 taking her prosthetic off and/or lying down.

17 132. She addresses her phantom pain by walking around her
18 apartment and waiting for the pain to subside.

19 133. Palla's use of her prosthesis has improved over the
20 past three years.

21 134. Specifically, Palla's prosthesis expert, Drew
22 Hittenberger, testified Palla has good balance, understands where
23 her prosthetic is in space, and can put her prosthesis on without
24 holding onto anything.

25 135. Even so, Palla still sometimes struggles to maintain
26 her balance when walking with her prosthesis or standing without
27 her prosthesis.

28 136. Palla testified that she has one or two "major falls"

1 (where she falls completely to the ground) per year.

2 137. She also has one "catch-herself fall" (where she trips
3 but catches herself before falling to the ground) every one or
4 two weeks.

5 138. Alongside her physical pain, Palla struggles with
6 feelings of insecurity, frustration and embarrassment.

7 139. Palla copes with the emotional consequences of her
8 injury by talking to close family and friends, going to church,
9 and meditating.

10 140. She has not, however, told her family members in India
11 about her accident or the resulting amputation.

12 141. Based on the time she has spent in India, Palla fears
13 her extended family would view her as "less than" if they found
14 out she was an amputee.

15 142. Nevertheless, Palla's decision not to tell her family
16 in India about her injury "w[ears] on her."

17 143. In Chicago, she went to therapy once a week for six
18 months.

19 144. She also attended one support-group meeting.

20 145. Palla testified that she did not continue going to
21 therapy or the support group because she did not find them
22 helpful.

23 146. She does not have specific plans to try therapy or
24 support groups again in the future.

25 147. In November 2018, she attended a ten-day meditation
26 retreat in California, and found it helpful.

27 148. Palla testified she would be interested in continuing
28 to go to meditation retreats.

1 II. OPINION

2 A. Damages

3 A plaintiff bears the burden of proving her damages by a
4 preponderance of the evidence. Model Civ. Jury Instr. 9th
5 Cir. 5.1. A plaintiff who meets this burden is entitled to the
6 "amount of money that will reasonably and fairly compensate the
7 plaintiff for any injury . . . caused by the defendant." Id. A
8 fact-finder must consider several factors to determine what
9 measure of damages will reasonably and fairly compensate the
10 injured party, including: the nature and extent of the injuries;
11 the disability, disfigurement, and/or loss of enjoyment of life
12 experienced; the mental, physical, and/or emotional pain and
13 suffering experienced; the reasonable value of necessary
14 medical care, treatment and services received; and the
15 reasonable value of necessary household help and/or non-medical
16 services required. Model Civ. Jury Instr. 9th Cir. 5.2. When a
17 plaintiff claims future damages, the fact-finder must also
18 consider whether the damages already incurred will, "with
19 reasonable probability," also be incurred in the future. Id.

20 1. Life Expectancy

21 Palla was born on May 8, 1994. She was 22 years old when
22 she was injured. She was 25 years old at the time of trial and
23 at the date of this Order. The parties stipulate that her life
24 expectancy is 82. Pretrial Conference Order at 12, ECF No. 321.

25 2. Past Economic Damages

26 Palla claims past economic damages. First Am. Compl.
27 ("FAC") ¶ 51. The parties stipulate Palla incurred \$305,762.03
28 in reasonable and necessary past medical costs. ECF No. 329.

1 Palla does not seek past loss of earnings or income. Pretrial
2 conference Order at 12. The Court accepts the parties'
3 stipulation and awards Palla \$305,762.03 in past economic
4 damages.

5 3. Future Economic Damages

6 Palla also contends she is entitled to future economic
7 damages. Although L M Sports concedes Palla is entitled to some
8 measure of damages for future medical expenses reasonably
9 incurred as a result of her injury, it disagrees with the
10 amount. At trial, Plaintiff presented testimony from Drew
11 Hittenberger, a prosthetist, and Dr. Christopher Stephenson, a
12 physiatrist. The Court found Hittenberger and Stephenson
13 qualified as experts in their respective fields. Hittenberger
14 testified about the prosthetic devices and associated expenses
15 Palla would reasonably incur throughout her life. Stephenson
16 provided testimony about other equipment, services, surgeries,
17 and treatments that he believed Palla would reasonably require
18 because of her disability. In response, L M Sports elicited
19 testimony from their retained experts—Rick Chavez, a
20 prosthetist, and Dr. Suzy Kim, a physiatrist. The Court found
21 Chavez and Kim likewise qualified as experts in their respective
22 fields.

23 The Court did not find the testimony of Hittenberger,
24 Stephenson, Chavez, or Kim to be persuasive *in toto*. Rather, it
25 found certain aspects of each expert's proposed life-care plan
26 credibly assessed the care, treatment, equipment and services
27 that Palla will, with reasonable probability, require in the
28 future. The lists that follow reflect those credibility

1 determinations.

2 The Court finds that over the course of her lifetime, Palla
3 will, with reasonable probability, require:

4 **Prosthetic Devices**

- 5 • 11 replacement walking prostheses;
- 6 • 11 walking prosthesis socket replacements;
- 7 • A sports prosthesis;
- 8 • Eight replacement sports prostheses;
- 9 • Seven sports prosthesis socket replacements;
- 10 • A backup walking prosthesis;
- 11 • Three replacement backup walking prostheses;
- 12 • A foot orthotic;
- 13 • 21 replacement foot orthotics; and
- 14 • Prosthetic device maintenance (10% of prosthesis cost).

15 **Physiatrist Visits**

- 16 • Four physiatrist visits per year for ages 25-27; and
- 17 • Two physiatrist visits per year for ages 27-82.

18 **Orthopedist Visits**

- 19 • Two orthopedist visits between ages 25-30;
- 20 • Four orthopedist visits between ages 31-40;
- 21 • Seven orthopedist visits between ages 41-50;
- 22 • Eight orthopedist visits between ages 51-60; and
- 23 • One orthopedist visit per year for ages 61-82.

24 **Physical Pain Management**

- 25 • One tube of compound cream per month for life;
- 26 • One acupuncture session per month for ten years;
- 27 • Two physical therapy sessions per year for ages 25-40;
- 28 • Five physical therapy sessions per year for ages 41-60;

- 1 • Six physical therapy sessions per year for ages 61-82;
2 and
3 • 15 occupational therapy sessions for life.

4 **Emotional Pain Management**

- 5 • 50 counseling sessions for life; and
6 • One meditation retreat per year for life.

7 **Surgical/Emergency Services**

- 8 • Five emergency room visits for life; and
9 • Two knee arthroscopies for life.

10 **Attendant Care**

- 11 • 15 hours per month from ages 25-60; and
12 • 40 hours per month from ages 61-82.

13 **Wound Care**

- 14 • Three regular visits; and
15 • Eight nursing visits.

16 **Other**

- 17 • A total gym;
18 • A power therapy table;
19 • Seven replacement power therapy tables;
20 • A portable shower bench;
21 • Seven replacement shower benches;
22 • A TENS unit;
23 • 14 replacement TENS units;
24 • A set of TENS unit electrodes;
25 • 227 replacement sets of TENS unit electrodes;
26 • A pair of Mobileg crutches;
27 • 14 replacement pairs of Mobileg crutches;
28 • A set of three resistance bands;

- 1 • 28 replacement sets of resistance bands;
- 2 • A set of two foam rollers;
- 3 • 56 replacement sets of foam rollers;
- 4 • A wheelchair; and
- 5 • Seven replacement wheelchairs.

6 The Court found credible the testimony of Carol Hyland regarding
7 the cost of these items and services. As a result, the Court
8 finds that, before conducting a present-value calculation,
9 Palla's future economic damages are \$2,912,344.63.

10 Neither party's economist conducted a present value
11 calculation for this total, and the Court does not endeavor to
12 render its own calculation. Using the spreadsheet attached as
13 Exhibit 1 to these findings of fact and conclusions of law, the
14 Court orders the parties to file supplemental reports with the
15 Court that calculate the present value of the \$2,912,344.63
16 award for future economic damages. The parties must use the
17 same economists who testified at trial. Moreover, those
18 economists must use the same methodologies used in their
19 original reports and described to the Court. Alternatively, the
20 parties may stipulate to the present value of the above-listed
21 amount.

22 4. Past Non-economic Damages

23 Palla is also entitled to past non-economic damages. As
24 both parties acknowledge, calculating non-economic damages is
25 not an exact science. The Court must consider the relevant
26 factors set forth in the Ninth Circuit's Model Civil Jury
27 Instruction 5.2 and, bearing those factors in mind, determine
28 what measure of damages will reasonably and fairly compensate

1 Palla for her non-economic injury. Model Civ. Jury Instr. 9th
2 Cir. 5.1. The testimony presented at trial indicated that Palla
3 suffered varying levels of physical and emotional suffering
4 during her accident, recovery, and acclimation to life as a
5 transfemoral amputee. As discussed below, the Court assigns
6 damages to those phases accordingly.

7 The most severe period of Palla's suffering, was, of course
8 the accident itself, followed closely thereafter by five months
9 spent in the hospital and at home in Portland recuperating from
10 her injuries. The Court finds \$5,500,000 reasonably and fairly
11 compensates Palla for: (1) the fear and excruciating pain she
12 experienced while caught in the boat's propeller; (2) for the
13 time she spent in the hospital following her amputation—when she
14 realized she lost her leg, began undergoing the first stages of
15 recovery, and started experiencing her first, and most severe,
16 bouts of phantom pain; (3) for her first two months in Portland,
17 Oregon, during which she underwent three debridement surgeries
18 and a skin graft and experienced the emotional suffering of
19 coming to terms with her amputation, along with the severe
20 physical pain of five wound dressing changes every day for
21 nearly a month; and (4) for the remaining three months she spent
22 recovering in Portland. Although the testimony does not
23 indicate that this period of recovery was as physically and
24 emotionally trying as the first two months, the Court does not
25 find—as Defendant would have it—that the blogs Palla published
26 and the interview she participated in reflect an absence of
27 severe physical and emotional injury.

28 The Court further finds \$2,500,000 reasonably and fairly

1 compensates Palla for non-economic injuries she suffered from
2 January 2017 through the date of this Order. The testimony at
3 trial showed that, prior to her accident, Palla moved through
4 the world as a physically- and socially-active, able-bodied,
5 confident young woman, eager to embark on international travels
6 and more than capable of taking on a demanding work schedule.
7 The habits and routines she had established reflected her pre-
8 accident capabilities. While the evidence supports the
9 reasonable inference that Palla may lead a remarkable,
10 accomplished life, it also supports the finding that she has had
11 to dedicate much of the past three years to learning how to
12 change those habits and routines to account for the fact that
13 she now moves through the world differently. And as the
14 testimony showed, this learning process has come with a
15 significant amount of physical and emotional suffering. Among
16 other things, Palla learned firsthand how driving and walking in
17 the snow is different with two legs than it is with one; how
18 revealing her disability subjects her to shame, while hiding
19 elicits skepticism of her needs; how chronic pain and fatigue
20 forces her to make sacrifices most young adults don't have to
21 make; and how spontaneity is far less achievable when wholly
22 relying on a prosthetic device for mobility. The Court finds
23 the pain and suffering associated with restarting her life as
24 someone with a transfemoral amputation was most pronounced in
25 the first year Palla returned to work, but that it has continued
26 to have significant impact on her life in the nearly two years
27 since.

28 In total, the Court awards Palla \$8,000,000 in total past

1 non-economic damages.

2 5. Future Non-economic Damages

3 Plaintiff claims future non-economic damages. The Court
4 finds Palla's future pain and suffering will be significant.
5 She will always face reminders of the physical limitations that
6 her disability places upon her life. Emotional pain aside, the
7 testimony showed that, as a result of her injury, Palla is
8 likely to suffer from some degree of physical pain for the rest
9 of her life—phantom pain, pain in her residual limb, and pain in
10 her contralateral muscles and joints. The Court must adequately
11 compensate her for an injury whose effects will be felt for
12 nearly six more decades.

13 But Palla is resilient. And while the Court does not
14 penalize her for that resiliency, it must account for the
15 evidence that showed Palla's ability to cope with the pain and
16 suffering accompanying her disability is likely to improve with
17 time up until the latter stages of her life when she will be
18 much less mobile and at greater risk to injury due to a fall.
19 As a result, the Court finds that \$2,500,000 will reasonably and
20 fairly compensate Palla's pain and suffering from December 2019
21 through December 2026; \$2,000,000 will reasonably and fairly
22 compensate her pain and suffering from January 2027 through
23 December 2036; \$2,000,000 will reasonably and fairly compensate
24 her pain and suffering from January 2036 to December 2046;
25 \$2,000,000 will reasonably and fairly compensate her pain and
26 suffering from January 2047 to December 2056; and \$3,500,000
27 will reasonably and fairly compensate her pain and suffering
28 from January 2057 to May 2076. In total, the Court awards Palla

1 \$12,000,000 in future non-economic damages.

2 B. Mitigation

3 In its closing argument, L M Sports argued the Court should
4 reduce Palla's damages because she failed to mitigate them. L M
5 Sports correctly argues plaintiffs have a duty to mitigate both
6 economic and non-economic damages. See Gomez v. American
7 Empress Ltd. Partnership, 189 F.3d 473 (9th Cir. 1999). Even
8 so, a defendant arguing a plaintiff failed to mitigate damages
9 bears the burden of proving two elements by a preponderance of
10 the evidence: (1) that the plaintiff failed to use reasonable
11 efforts to mitigate damages; and (2) the amount by which damages
12 would have been mitigated. Model Civ. Jury Instr. 9th Cir. 5.3.
13 The Court finds L M Sports failed to satisfy its burden.

14 L M Sports argues Palla's failure to make more concerted
15 efforts toward attending to her physical and mental health
16 amount to a failure to mitigate damages. It suggests Palla
17 could have used the time she's spent traveling to acquire an
18 orthopedist and a physiatrist in Philadelphia, attend physical
19 therapy sessions, go to counseling, or join a support group.
20 L M Sports also argues Palla's disavowal of prescription pain
21 medication, cannabis, and CBD likewise reflect plaintiff's
22 unwillingness to mitigate the harm she has suffered and
23 continues to experience. Finally, it argues Palla has
24 volitionally made life harder upon herself through the
25 apartments she has chosen to live in and her refusal to request
26 accommodations in airports or at work.

27 Although Defendant, Dr. Palla, Koeltl, and the Court might
28 like to see Palla spend more time trying different modalities

1 for physical and emotional relief, that is not the only question
2 at hand. Rather, Defendant must also show that by engaging in
3 these specific efforts, Palla would have, more likely than not,
4 alleviated her injuries in some respect. See Model Civ. Jury
5 Instr. 9th Cir. 5.3. This, L M Sports did not do. Palla
6 testified she had, at various points, tried counseling, physical
7 therapy, hypnosis, and a support group. She, then, gave
8 reasoned, and unrefuted, explanations for why she did not find
9 those services helpful. She explained that she foregoes
10 prescription pain medications because of the physical effect
11 they have on her and her fear of becoming dependent on them.
12 She also need not explain why she has not yet experimented with
13 substances that are still illegal under federal law.

14 The Court does not disagree with L M Sports's argument that
15 Palla has not chosen the most intuitive living arrangements
16 given her amputation. Even so, L M Sports failed to adduce any
17 evidence that Palla had other, comparable housing options that,
18 if chosen, would have likely reduced her non-economic damages.
19 Likewise, it did not show what types of travel and work
20 accommodation Palla could have sought out or how they would have
21 eased her suffering, if requested.

22 In short, the Court agrees that Palla could have taken more
23 reasonable efforts to mitigate her damages over the past two and
24 a half years. But L M Sports fell far short of proving the
25 amount by which damages would have been mitigated had she taken
26 those efforts. Accordingly, the Court denies L M Sports's
27 request to reduce Palla's damages on a failure-to-mitigate
28 theory.

1 C. Joint and Several Liability

2 Finally, L M Sports argues that in an admiralty case like
3 this, the law does not require the application of joint and
4 several liability. But as the Supreme Court and the Ninth
5 Circuit have indicated time and again, it is a "well-established
6 principle" that joint and several liability applies in
7 admiralty. McDermott, Inc. v. AmClyde, 511 U.S. 202, 220 (1994)
8 ("[T]he well-established principle of joint and several
9 liability was in no way abrogated by Reliable Transfer's
10 proportionate fault approach."); see also Edmonds v. Compagnie
11 Generale Transatlantique, 443 U.S. 256, 271 n.30 (1979);
12 Lundquist v. U.S., 116 F.3d 1486 (9th Cir. 1997); see also Moreno
13 v. Ross Island Sand & Gravel, Co., 704 Fed. Appx. 716 (9th Cir.
14 2017). Neither court has distinguished between cases involving
15 commercial ventures and those involving recreational ones or
16 alluded to the prudence of such a distinction. This Court sees
17 no reason to do so now. The Court therefore finds that joint
18 and several liability applies in this case.

19
20 III. CONCLUSIONS OF LAW AS TO DAMAGES

21 For the reasons set forth above, the Court concludes as
22 follows:

- 23 1. Palla's past economic damages are **\$305,762.03**.
- 24 2. Palla's non-adjusted future economic damages are
25 **\$2,912,344.63**
- 26 3. Palla's past non-economic damages are **\$8,000,000**.
- 27 4. Palla's future non-economic damages are **\$12,000,000**.
- 28 5. L M Sports did not show, by a preponderance of the

1 evidence, that Palla failed to mitigate her damages.

2 6. L M Sports and Paul Garcia are jointly and severally
3 liable.

4

5 IV. ORDER


6 The Court finds that Plaintiff Manisha Palla is entitled to
7 recover **\$20,305,762.03** for past economic damages, past non-
8 economic damages and future non-economic damages. Palla is also
9 awarded the present value of **\$2,912,344.63** for future economic
10 damages. Within 30 days of this Order, the parties must file
11 supplemental reports from their economists calculating the
12 present value of this amount. Alternatively, the parties may
13 stipulate to a present value amount.

14 IT IS SO ORDERED.

15 Dated: December 2, 2019

16

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JOHN A. MENDEZ
United States District Judge

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EXHIBIT 1

Age	Year	Walking Prosthesis	Walking Socket	Sports Prosthesis	Sports Socket	Backup Prosthesis	Foot Orthotic
25	2019			\$33,188.19			\$357.10
26	2020						
27	2021	\$89,596.48			\$19,064.22		\$357.10
28	2022						
29	2023		\$19,064.22	\$33,188.19			\$357.10
30	2024						
31	2025						
32	2026	\$89,596.48			\$19,064.22		\$357.10
33	2027						
34	2028		\$19,064.22	\$33,188.19			
35	2029						
36	2030	\$89,596.48			\$19,064.22		\$357.10
37	2031						
38	2032		\$19,064.22	\$33,188.19			\$357.10
39	2033						
40	2034						
41	2035	\$89,596.48			\$19,064.22		\$357.10
42	2036						
43	2037		\$19,064.22	\$33,188.19			\$357.10
44	2038						
45	2039						
46	2040	\$89,596.48			\$19,064.22		\$357.10
47	2041						
48	2042		\$19,064.22	\$33,188.19			\$357.10
49	2043						
50	2044						
51	2045	\$89,596.48			\$19,064.22		\$357.10
52	2046						
53	2047		\$19,064.22	\$33,188.19			\$357.10
54	2048						
55	2049						
56	2050	\$89,596.48			\$19,064.22		\$357.10
57	2051						
58	2052		\$19,064.22	\$33,188.19			\$357.10
59	2053						
60	2054						
61	2055	\$89,596.48			\$19,064.22		\$357.10
62	2056						
63	2057		\$19,064.22	\$33,188.19			\$357.10
64	2058						
65	2059	\$89,596.48				\$22,336.32	\$357.10
66	2060						
67	2061						
68	2062		\$19,064.22				\$357.10
69	2063						
70	2064						
71	2065	\$89,596.48				\$22,336.32	\$357.10
72	2066						
73	2067						
74	2068		\$19,064.22				\$357.10
75	2069						
76	2070						
77	2071	\$89,596.48				\$22,336.32	\$357.10
78	2072						
79	2073						
80	2074		\$19,064.22				\$357.10
81	2075						
Total		\$985,561.28	\$209,706.42	\$298,693.71	\$152,513.76	\$67,008.96	\$7,856.20

Shower Bench	Tens Unit	Electrodes	Crutches	Wheelchair	Resistance Bands	Foam Rollers	Attendant Care
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$54.74	\$98.78	\$115.80	\$149.99	\$500.00	\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
	\$98.78	\$115.80	\$149.99		\$67.47	\$47.78	\$4,290.00
		\$115.80				\$47.78	\$4,290.00
		\$115.80			\$67.47	\$47.78	\$4,290.00
\$437.92	\$1,481.70	\$6,600.60	\$2,249.85	\$4,000.00	\$1,956.63	\$2,723.46	\$394,680.00

Wound Care	Total	PV
	\$56,628.61	
	\$13,378.30	
	\$132,719.66	
	\$12,715.35	
	\$70,692.10	
	\$12,732.61	
	\$12,782.82	
\$100.00	\$135,956.52	
	\$13,217.62	
	\$70,396.29	
	\$12,735.59	
	\$130,506.28	
\$100.00	\$10,792.99	
	\$68,247.21	
	\$10,881.38	
\$200.00	\$33,002.68	
	\$131,938.88	
	\$11,493.11	
\$100.00	\$69,740.99	
	\$11,720.32	
	\$14,310.67	
	\$131,622.64	
	\$15,016.04	
\$100.00	\$69,673.52	
	\$12,019.30	
	\$11,493.11	
	\$131,917.32	
	\$11,703.06	
	\$69,679.81	
	\$11,703.06	
	\$17,307.41	
\$200.00	\$131,822.64	
	\$12,036.56	
	\$69,573.52	
	\$11,770.53	
	\$30,883.48	
\$100.00	\$140,904.57	
	\$23,587.05	
	\$78,279.47	
	\$20,341.54	
	\$225,646.75	
\$100.00	\$20,441.54	
	\$20,636.22	
	\$41,704.99	
	\$20,657.78	
	\$23,587.05	
	\$144,155.11	
\$200.00	\$20,541.54	
	\$20,884.99	
	\$41,704.99	
	\$22,700.38	
\$100.00	\$20,668.75	
	\$147,422.18	
	\$20,568.75	
	\$20,409.01	
	\$41,932.20	
\$100.00	\$20,757.78	
\$1,400.00	\$2,912,344.63	