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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 9/30/2022
By /s/ Vanessa Jimenez
Deputy Clerk

8 Attorney for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN MATEO

11 MICHAEL FRIEDLAND,

12 Plaintiff,

13 v.

14 JARLIN ELLEN SUNG, ET AL.,

15 Defendants.

16 Case No. 19CIV03288

17 ASSIGNED FOR ALL PURPOSES TO HON.
18 MARIE S. WEINER, DEPT. 2

19 PLAINTIFF'S MOTION IN LIMINE RE
20 WAGE LOSS CLAIM

21 Date: September 28, 2022 Time: 9:00 am
22 Dept. 2

23 The instant action arises out of a motor vehicle collision which occurred on June 16, 2017.
24 Mr. Friedland was driving on Highway 101 when he brought his vehicle to a stop for traffic in
25 front of him. Shortly after stopping, his vehicle was impacted from the rear by a vehicle driven
26 by defendant's Toyota Prius.

27 As a result of the collision, plaintiff suffered injuries to his upper back and neck. In
28 addition to neck pain, he also developed headaches. Diagnoses included sprain/strain injuries to
the cervical spine as well as a left paracentral disc protrusion with annular tear at the C6-7 level
of the cervical spine.

As it concerns this case, plaintiff, Michael Friedland, alleges that the nature of his injuries
and persistent/residual pain in his upper back and neck have impacted his ability to fully engage

1 in his occupation as a painter.

2 Michael Friedland owns Friedland Painting. He has owned and operated Friedland
3 Painting for many years.

4 In 2013, Mr. Friedland incorporated Friedland Painting. At that point, it became known
5 as Friedland Painting, Inc. Plaintiff, Michael Friedland, is the sole shareholder of Friedland
6 Painting, Inc. and holds the position of President.

7 Mr. Friedland is an employee of Friedland Painting, Inc. and receives a salary and is
8 issued a W2 Wage and Tax Statement from the corporation. In addition to the wages he received,
9 he is also entitled to dividends or a payout from the residual profits of the corporation. Residual
10 profits are often determined by the labor that Mr. Friedland puts into the company on an
11 individual basis. The financial success of the company also impacts the wages paid to Mr.
12 Friedland (i.e. pay raises/increases). It is his skill, his experience, and his dedication to the work
13 he performs which enhances the business and provides contacts with contractors that allows for
14 business development and profits. The success of the business also results in pay increases for
15 Mr. Friedland.

16 Unfortunately, as a result of this accident, Mr. Friedland found that he could not perform
17 all the physical work he did before the collision. This included painting and working longer
18 hours to complete jobs. Sustained work at or above shoulder level was very difficult, if not
19 impossible. The onset of pain and resulting headaches also impacted his ability to continue
20 working the hours necessary to complete jobs and to address new business.

21 As a result, he found it necessary to hire others to perform the physical work he once
22 performed. He often worked longer hours to complete the job. This was no longer possible
23 following this automobile accident.

24 Plaintiff contends that the necessity of hiring the additional help impacted his business by
25 increasing his labor costs (including taxes), insurance costs (including workers' compensation
26 coverage) and decreasing the companies income. As a result, he has suffered a loss of earnings
27 and earning capacity due to his inability to perform the physical work he once did for the business
28 and his inability to maintain his pre-accident pace of work. He had hoped to raise his own salary

1 and also to generate dividends from his company.

2 The defendants contend that plaintiff is unable to collect lost wages and earning capacity
3 derived at least, in part, from the lost profits of his solely owned corporation. They seek to
4 prohibit plaintiff from introducing any evidence concerning the effect the June 2017 accident had
5 or may have had, on the profitability and/or earnings of Mr. Friedland's business, Friedland
6 Painting, Inc.

7 Plaintiff contends that the defendant's position is not consistent with the Jurisprudence of
8 California as it concerns proof of lost earnings and impaired earning capacity.

9 The defendants have cited numerous cases in prior statements. Each of the cases involved
10 a corporation seeking to claim damages or lost profits as a result of injuries to their employees,
11 officers, and/or shareholders. Consistent with California case law, these claims have been turned
12 away. See *I.J. Winrot & Son, Inc. v. Jackson* (1985) 40 Cal3d 327.

13 Defendants position and supporting authority is not applicable to this action. Mr.
14 Friedland's corporation is not a party to this action. Mr. Friedland is the Plaintiff, in his individual
15 capacity and he is seeking compensation for his lost earnings and impaired earning capacity.

16 The general rule in California is that owners of incorporated businesses may not recover
17 lost profits per se if they bring suit in the *individual capacity* only, but they may produce evidence
18 of their business's lost profits as evidence of their own lost earnings or impaired earning capacity.
19 Thus, under a plea of general damages and to prove loss of earning capacity, it is permissible to
20 show that wages, salary, or emoluments would be open to the plaintiff in a business, vocation,
21 trade, or profession, which he understands and in which he would have the rights and ability to
22 engage except for the injuries sustained. See *Osterode v. Almquist* (1948) 89 CalApp2d 15.
23 Essentially, the holding is that an individual may produce evidence of his business' lost profits as
24 evidence of his own lost earnings or impaired capacity to earn.

25 In *Osterode* the Court held that that if the income of a business results primarily from the
26 skills and efforts of an owner who is disabled from pursuing the business, the past and reasonably
27 certain future profits of the business are proper factors to consider in determining the owner's
28 earning capacity.


1 Along a similar line, in the case of *Sharfman v. State* (1967) 253 CalApp2d 333, 337, the
2 Court held that plaintiff, a landscape architect, could establish a lost income by showing what his
3 “share of the partnership income had been in the past”, the Court determined that the plaintiff
4 could recover loss of earning capacity and that in order to establish such loss of income, he may
5 show what his share of the partnership income had been in the past and how this share was
6 diminished by his inability to work because of the injuries. *Id at 337.*

7 In this case, plaintiff’s earnings are derived not only by the salary he receives from the
8 corporation but also by the profits generated by the company due to his contributions to the
9 business not only in efforts to develop and grow the business but also in the physical efforts of
10 performing the work necessary to complete the tasks and to generate the income. The
11 profitability of the corporation would allow plaintiff to increase his salary. However, because of
12 the need to employ others to perform physical work he would normally perform, he was not in a
13 position to increase his salary and profits were impacted and/or nonexistent. The purpose of
14 introducing the evidence of losses to the corporation is to demonstrate what losses Michael
15 Friedland has suffered by way of lost earnings or impaired earning capacity occasioned by his
16 inability to work to his full capacity because of his injuries.

17 Plaintiff should be allowed to provide evidence of such economic impact, including, the
18 impact his inability to perform the physical work and maintain his pace of work had on the
19 corporation.
20
21

22 Dated: 9/30/2022

Respectfully submitted,

23 
24 _____
25 Gregory C. Cattermole, Esq.
26 Attorney for Plaintiff
27
28

1 MATT MATEJCEK, ESQ. – State Bar No. 319147
2 **STRATMAN & WILLIAMS-ABREGO**
3 P.O. Box 258829
4 Oklahoma City, OK 73125-8829
5 Phone: (510) 457-3440
6 Email: norcal.legal@farmersinsurance.com

7 Attorney for Defendant,
8 **ARMANDO RODRIGUEZ GUTIEREZ**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN MATEO**

11 RAQUEL RODRIGUEZ,

12 Plaintiff,

13 vs.

14 ARMANDO RODRIGUEZ GUTIEREZ, and
15 DOES 1 TO 25, ,

16 Defendants.

Case No.: 21-CIV-00926
UNLIMITED JURISDICTION

ASSIGNED TO FOR ALL PURPOSES:
HON. ROBERT D. FOILES
DEPT: 21

**NOTICE OF TAKING DEPOSITION BY
REMOTE/VIDEOCONFERENCE AND
DEMAND TO PRODUCE**

17 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

18 **PLEASE TAKE NOTICE** of the deposition on oral examination of Plaintiff, RAQUEL
19 RODRIGUEZ, whose address and telephone number is known to his/her attorney.

20 **DATE OF DEPOSITION: November 22, 2022 at 10:00 AM**

21 **LOCATION OF DEPOSITION:** The deposition will occur via remote
22 videoconference service, pursuant to California Rules of Court Rule 3.1010 and Code of Civil
23 Procedure Sections 2025.310, et seq. Pursuant to Code of Civil Procedure Sections 2025.310, et
24 seq. Defendant's attorney hereby elects that they shall not be present with the deposition officer at
25 the time of the deposition and that the deposition officer will attend the deposition at a different
26 location than the deponent via remote means. A link to the videoconference service will be
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1 provided prior to the deposition.

2 The deponent will testify from a remote location of the deponent's election. The deponent
3 is asked to appear via an internet-equipped device with a microphone and video camera (e.g.
4 computer) with a reliable high-bandwidth internet connection, in the deponent's possession or
5 obtained by the deponent at the deponent's expense. Any expense pertaining to the deposition
6 (e.g. computer, Internet connection) shall be paid by the person who incurred the expense.
7

8 **METHOD OF RECORDING:** The deposition will be recorded by either
9 stenographic means by any California certified court reporter, or, if stipulated, by digital audio
10 technology and a person authorized to administer oaths, as permitted by California Code of Civil
11 Procedure § 2025.340; the California certified court reporter or person authorized to administer
12 oaths shall place the deponent under oath remotely through the remote videoconference service.
13

14 **VIDEO RECORDING:** Pursuant to California *Code of Civil Procedure* §
15 2025.220(a)(5), this deposition may also be recorded by video technology.

16 **ADDITIONAL TERMS:** Said deposition will continue from day to day, Sundays and
17 holidays excepted, until completed. A certified transcript of this proceeding is intended for
18 possible use at trial, for the purpose of discovery and for all other uses permitted under applicable
19 procedural rules. In addition, Defendant reserves the right to employ a "real time" transcription of
20 the proceeding. The attorney for noticing party has been directed to use one or more particular
21 officers or entities to provide all services for the deposition.
22

23 **TRIAL RUN OF DEPOSITION:** Before the date of the scheduled deposition,
24 defendant's counsel's office can make itself available to opposing counsel, the deponent and all
25 other persons intending to attend the deposition to participate in a trial run that tests the remote
26 videoconference service and all of the hardware equipment and software that will be used in the
27 deposition.
28

1 NOTICE IS FURTHER GIVEN that defendant's counsel intends to confirm on the record
2 that:

3 (1) That the oath shall be administered remotely via the videoconference, in lieu of an oath
4 administered in person.

5 (2) The deponent's attorney (if any) shall confirm the identity of the deponent in addition
6 to any effort by the court reporter or notary.

7 (3). The deponent shall also identify any and all persons present in the same physical room
8 as the deponent at all times during the deposition, and shall identify any and all persons with
9 whom the deponent communicates privately during the deposition (not including communications
10 with the deponent's attorney during breaks of the deposition).

11 (4) That the deponent and all attorneys shall minimize any unnecessary noise from
12 interrupting the videoconference deposition.

13 (5) That the court reporter shall be reporting the deposition remotely. Alternatively, if
14 agreed in advance of the deposition, that the deposition shall be recorded by digital audio
15 technology and a notary authorized to administer oaths.

16 NOTICE IS FURTHER GIVEN that, pursuant to California *Code of Civil Procedure* §
17 2025.340 and 2025.620, Defendant reserves the right to use at trial (during opening, direct, cross
18 examination, closing, rebuttal, or any other time) the video recording of the deposition testimony,
19 in whole or in part, even though the deponent is available to testify.

20 NOTICE IS FURTHER GIVEN that if an interpreter is required to translate testimony,
21 written notice of same must be given at least five (5) working days before the deposition date, and the
22 specific language and/or dialect thereby designated.

23 Please be advised that if there are any court reporter, videographer, notary and/or
24 interpreter fees incurred for failing to appear for a confirmed deposition, then the deponent is
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1 responsible for such incurred fees.

2 **DOCUMENT PRODUCTION:** Pursuant to C.C.P. § 2025.220 the deponent (via the
3 deponent's attorney if any) shall email Defendant's attorney at the time of the deposition with the
4 following documents and other items in his/her possession or under his/her control that contain
5 any material pertaining to the issues in the above-entitled action, specifically:
6

7 1. Any and all bills, reports, records, photographs or any other documents pertaining to
8 injuries and medical treatment received by Plaintiff or claimed to have resulted from the subject
9 accident/incident which is the subject of this litigation.

10 2. Any and all check stubs, time cards, payroll records, profit and loss summaries, balance
11 sheets, accounting ledgers, tax records, or any other documents pertaining to any claim of loss of
12 income or other economic harm as a result of the subject incident.
13

14 3. Any and all photographs, estimates, repair bills, receipts, or any other documents
15 pertaining to any property damage alleged to result from the subject incident.

16 4. Any and all photographs, sketches, diagrams, or any other graphic representations of
17 the scene or circumstances of the subject incident.

18 5. Any and all written or recorded witness statements, statements by any defendant,
19 investigation reports, or any other reports or documents pertaining to the facts or reconstruction of
20 the subject incident.
21

22 6. Any and all documents or records which pertain to or support any other claim of
23 damages alleged to have resulted from the subject incident.

24 7. Any and all insurance policies that provide for coverage or reimbursement for any of
25 the damages or financial loss claimed to have been caused in the subject incident.
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27 **OBJECTION TO DEPOSITION:** Any objections to the deposition proceeding under
28 these circumstances are waived if not emailed to the noticing attorney at least three (3) weekdays

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before the deposition.

DATED: September 30, 2022

STRATMAN & WILLIAMS-ABREGO

BY: 

MATT MATEJCEK, ESQ.
Attorney for Defendant,
ARMANDO RODRIGUEZ GUTIEREZ

1 Re: Rodriguez v. Rodriguez, et al.
2 Case Number: 21-CIV-00926

3 **PROOF OF SERVICE**
4 **Code of Civil Procedure §§ 1013a, 2015.5**


5 I am a resident of the State of California and over the age of eighteen years, and not a
6 party to the within action. My business address is P.O. Box 258829, Oklahoma City, OK
7 73125-8829. On September 30, 2022, I served the following document(s):

8 **NOTICE OF TAKING DEPOSITION BY REMOTE/VIDEOCONFERENCE**
9 **AND DEMAND TO PRODUCE**

10 By placing the document(s) listed above in a sealed envelope, addressed as set
11 forth below, with postage fully prepaid, and placing the envelope for collection
12 and mailing by the U.S. Postal Service on the same day following the firm's
13 ordinary business practices of which I am readily familiar. I am aware that on
14 motion of the party served, service is presumed invalid if postal cancellation
15 date or postage meter date is more than one day after date of deposit for mailing
16 in affidavit.

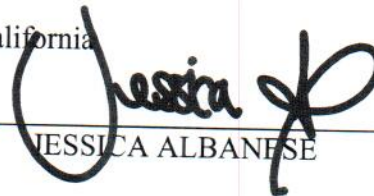
17 By causing a true copy thereof to be personally delivered to the person(s) at the
18 address(es) set forth below.

19 By electronically serving the document(s) described above via a Court approved
20 File & Serve vendor on those recipients designated on the Transaction Receipt
21 located on the vendor's Website.

22 By electronically serving the document(s) to the electronic mail address set forth
23 below on this date before 11:59:59 p.m. pursuant to and consistent with Code of
24 Civil Procedure §§1010.6(a)(2), (4), (5) and 1010.6(e) from email address
25  jessica.albanese@farmersinsurance.com.

26 I declare under penalty of perjury under the laws of the State of California that the above is
27 true and correct.

28 Executed on September 30, 2022, at Alameda, California



JESSICA ALBANESE

1 Re: Rodriguez v. Rodriguez, et al.
2 Case Number: 21-CIV-00926

3 **SERVICE LIST**

4 Gregory C. Cattermole, Esq.
5 Law Office of Gregory C. Cattermole
6 477 Ninth Avenue, Suite 101
7 San Mateo, CA 94402
8 Attorney for Plaintiff, Raquel Rodriguez
9 Phone: (650) 345-6811
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1 *Friedland v. Sung, et al.*
2 *San Mateo County Superior Court No. 19CIV03288*

3 PROOF OF SERVICE

4 I, the undersigned, declare:

5 I am employed in the County of San Mateo, State of California. I am over the age of eighteen
6 and not a party to this action. My business address is 477 Ninth Avenue, Suite 101, San Mateo,
CA 94402-1854.

7 On September 30, 2022, I served the attached document(s):

8 PLAINTIFF'S MOTION IN LIMINE RE WAGE LOSS CLAIM

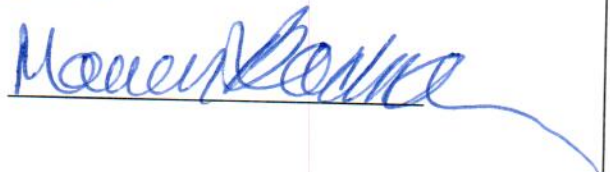
- 9 — **By MAIL**, being familiar with the practice of this office for the collection and the
10 processing of correspondence for mailing with the United States Postal Service, and
deposited in the United States Mail copies of same to the business addresses set forth
below, in a sealed envelope fully prepaid.
11 — **By FACSIMILE**, by personally transmitting same via an electronic facsimile machine
between the hours of 9:00 a.m. and 5:00 p.m. and thereafter deposited same in the United
12 States Mail, copies of same to the business addresses set forth below, in a sealed envelope
fully prepaid.
13 — **By PERSONAL DELIVERY**, and personally delivered, or caused to be delivered, same
to the addresses listed below.
14 — **By FEDERAL EXPRESS**, for delivery the following business day by placing same for
collection in a Federal Express Deposit Box to the business addresses set forth below.
15 X **By EMAIL**, I transmitted from electronic address maureen@cattermolelaw.com, a true
and correct copy of the above-referenced document(s) to the parties listed below.

16 **Attorneys for Defendant, Jarlin Ellen Sung**

17 Edgar Hawkyard, Esq.
18 Jeanette N. Little & Associates
4450 Rosewood Drive, Suite 450
19 Pleasanton, CA 94588
Telephone: (925) 225-6838 Facsimile: (855) 732-9437
ehawkyard@statefarm.com
20 alyssa.pearcy.fcrj@statefarm.com

21 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

22 Executed on the above date at San Mateo, California.

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