

**IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM**

FRANK UKAU and SOFILAN SINUK,

Plaintiffs,

v.

JENNIE WANG, et al.,

Defendants.

Case No. 1:11-cv-00030

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER FOR  
COMPENSATORY DAMAGES**

This is primarily a personal injury lawsuit, raising the claims of negligence and loss of consortium. It is also a suit for unpaid overtime. The plaintiffs are Frank Ukau and Sofilan Sinuk. The remaining defendants are Jennie Wang and Entity Construction.<sup>1</sup>

A bench trial was held. The Court, having taken under advisement the objections to evidence offered at trial, and having considered that evidence, oral and documentary, now issues both its rulings on those objections and its findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

**I. EVIDENTIARY RULINGS**

**A. EXHIBIT 1: UKAU AND SINUK'S MARRIAGE**

Defendants objected to the admission of Sinuk's marriage certificate (part of Exhibit 1). The Court overrules this objection and admits the marriage certificate into evidence. Defendants first argued that the exhibit was not timely produced. But Defendants never asked for it in discovery, so

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<sup>1</sup> Plaintiffs and Defendant Chung Kuo Insurance Co., Ltd., entered into an Amended Stipulation for Dismissal that was granted by the court on April 21, 2014. (ECF Nos. 93, 97).

1 Plaintiffs had no obligation to produce it. They next argued that the exhibit was not authentic. This  
2 argument is a non-starter. Authenticity requires only that Ukau “produce evidence sufficient to support  
3 a finding that the item is what [he] claims it is.” Fed. R. Evid. 901(a). Here, Ukau and Sinuk—  
4 witnesses with knowledge, Fed. R. Evid. 901(b)(1)—testified that it was their marriage certificate.

5 True, there are some recent writings on the certificate suggesting that maybe the marriage was  
6 only finalized after this lawsuit’s filing. But that does not make the document unauthentic. Ukau  
7 offered the document as-is, to show exactly what it shows. Whatever its probative strength is for the  
8 factfinder. *United States v. Tank*, 200 F.3d 627, 631 (9th Cir. 2000); *United States v. Hock Chee Koo*,  
9 770 F. Supp. 2d 1115, 1121 (D. Or. 2011).

10 In sum, the objection is overruled, and the marriage certificate is admitted into evidence.

11 **B. EXHIBIT 29: LIST OF ALL REAL PROPERTIES OWNED BY ENTITY**

12 Ukau seeks the admission of Exhibit 29, which is a list of all the real properties that Entity  
13 transferred after Ukau’s accident. (ECF No. 107 at 12.) He asserts it is relevant both to Ukau’s lien  
14 rights under 22 GCA §§ 9118 and 3214 and to punitive damages. (*Id.*) Defendants objected to its  
15 admission.  
16

17 This exhibit is not relevant to any issue in this proceeding, so the objection is sustained and  
18 Exhibit 29 is therefore excluded. Liens are incidental to this case. Ukau can receive a lien only if he  
19 first prevails on his claims here. *See* 22 GCA §§ 9118, 3214. There is no separate evidence needed to  
20 establish a lien; it is just automatically granted by prevailing on the underlying claims. *See id.*

21 Plaintiffs voiced their concern that Entity had fraudulently transferred this property in an effort  
22 to evade judgment and the lien. But that concern is of no relevance here, and it must instead be brought  
23 in a separate fraudulent conveyance action. *See Town House Dept. Stores, Inc. v. Ahn*, 2000 Guam 32  
24 (2000).

1 Nor is the exhibit relevant to punitive damages. These damages are permissible only where the  
2 wrongful conduct is so reprehensible as to warrant “further sanctions to achieve punishment or  
3 deterrence.” 20 GCA § 2120. The wrongful conduct in the complaint is the tortious injury and non-  
4 compliance with overtime laws. Thus, the punitive damages question revolves around that conduct—  
5 whether the tortious conduct and non-compliance needs to be deterred—and not whether Entity  
6 fraudulently transferred property. If Entity did indeed fraudulently transfer any property, that conduct  
7 would be deterred through punitive damages in a fraudulent conveyance action.

8 Ukau’s citation to one case (ECF No. 107 at 12) does not change this conclusion. That case  
9 says only that financial records are relevant to punitive damages. *Alhambra v. Superior Court*, 110  
10 Cal. App. 3d 513, 520 (Cal. Ct. App. 1980). Presumably—the court never says—this is because real  
11 punishment requires considering the defendant’s net worth (a \$10,000 fine punishes McDonald’s little,  
12 but a McDonald’s cashier a lot). But the financial records here do not show Defendants’ present worth;  
13 they show their former assets. This says nothing of Defendants’ present worth.

14 In sum, the objection is sustained, and Exhibit 29 is not admitted into evidence.

15  
16 **C. EXHIBITS F & G: POST-ACCIDENT PAYMENTS**

17 Plaintiffs objected to the admission of Exhibits F and G. These exhibits show payments made  
18 from Entity and Wang to Ukau. These exhibits are relevant to Defendants’ offset defense. If the  
19 payments are loans to Ukau, Defendants are entitled to offset this value from any judgment entered.  
20 This “right to set-off is a common-law right, which belongs to every creditor . . . .” John J. Dvorske,  
21 80 C.J.S. Set-off and Counterclaim § 3; *see also Gratiot v. United States*, 40 U.S. 336, 370 (1841).  
22 These exhibits are relevant and material to Defendants’ offset defense (ECF No. 4 at 6), so they are  
23 admitted, and the objection is overruled.

1 Ukau also argues that even if these exhibits are relevant to an offset defense, that defense was  
2 waived because Defendants supposedly forgave the loans. But that is not true. Defendants *offered* to  
3 settle this matter by paying Ukau the sum he would be entitled to under workers' compensation,  
4 through both a cash payment and forgiving the loans. Ukau declined, so no loans were forgiven. *See*  
5 Fed. R. Civ. P. 68(b) ("An unaccepted offer is considered withdrawn . . .").

6 There is another argument on these exhibits. Defendants contend that *all* post-accident  
7 payments were loans. The evidence offered belies the claim. Some payments were specifically  
8 denominated as loans (per the checks' memo lines), and the Court agrees on that score: These  
9 payments were loans. But other payments were not denominated as anything (other than as "FOR  
10 Food Expenses" or similar). At trial, Wang's testimony on these exhibits was brief. It comprised  
11 basically one statement relevant to this issue: "This one he don't need us to pay back." Whatever that  
12 one was—the Court was not made aware—it was no loan. Because, by definition, loans must be paid  
13 back. Given the testimony, this Court finds that only payments that are denominated as loans are loans;  
14 the remainder are gifts. Thus, the total outstanding loans amount to \$2,484.37.<sup>2</sup>

15 In sum, the objection is overruled, and Exhibits F and G are admitted into evidence.

16 //

17 /

18  
19  
20 <sup>2</sup> The Court arrived at this figure by summing all the checks or other documents in Exhibit G that specifically denominated  
21 themselves as loans. It does not include the checks that merely reference Ukau's car loan in the memo line because those  
22 checks basically say only that they are "for that car loan," not that they are a "loan for paying off that car loan." The checks  
23 that the Court found to be loans to Ukau comprise the following: a \$200 check for expenses dated August 5, 2011; a \$200  
24 check for expenses dated August 8, 2011; a \$60 check for card payments dated August 10, 2011; a \$200 check for family  
expenses dated August 15, 2011; a \$120 check for car insurance dated August 15, 2011; a \$200 check for family expenses  
dated August 16, 2011; a \$60 check for credit card payments dated August 18, 2011; a \$200 check for family expenses  
dated August 23, 2011; an \$80 check for family expenses dated August 24, 2011; a \$200 check for family expenses dated  
August 29, 2010; a \$200 check for a Citi Bank payment dated September 2, 2011; a \$200 check for family expenses dated  
September 6, 2011; a \$200 check for family expenses dated September 9, 2011; a \$200 check for family expenses dated  
September 16, 2011; and a \$164.37 check for the power bill dated September 27, 2011.



1           Ukau was Entity's employee. Entity did not have workers' compensation insurance coverage  
2 for Ukau, but it did have such coverage for other employees.

3  
4           **A. THE ACCIDENT**

5           On July 5, 2011, Ukau was working for Entity at a construction site. Wang was also present.  
6 She was loading steel panels into the back of her Toyota Tacoma, intending to return them to Home  
7 Depot. Before she could finish loading the panels, she needed to move the truck to let a car pass by.  
8 Wang then entered the truck, leaving the tailgate down and the steel panels unsecured.

9           The truck was parked on the incline of a gravel road. As she began backing up her truck, she  
10 experienced difficulty; the truck began slipping in the gravel. She failed to correctly observe her  
11 surroundings, and she felt her truck hit an unidentified object, which turned out to be a cement wall or  
12 similar object. She panicked and slammed on the breaks. The unsecured steel panels then fell out of  
13 the truck and onto Ukau's left leg. Excruciating pain followed, and Ukau thought he would die.

14           Wang called 911, and Ukau was admitted to the hospital. The leg worsened with time, and  
15 doctors informed him that the leg may need to be amputated below the knee. (Ex. 2.) On July 14, 2011,  
16 Ukau's leg bled significantly, and doctors determined that his leg needed to be amputated above the  
17 knee. (*Id.*) They performed the amputation, and he was discharged on July 27, 2011. (*Id.*) Ukau's  
18 injury remained painful throughout his hospital stay.

19           The pain continued after his discharge from the hospital, and it continues today. He  
20 occasionally feels phantom pains. He will feel a pain or itch in his left foot, only to realize he has no  
21 left foot. He once rose from bed and stepped on his left leg, only to realize as he fell to the ground that  
22 he lacks that leg.

23           Ukau now has a prosthesis. It itches, so he wears it only outside the house; he leaves it off at  
24 home and instead uses crutches.

1           The prosthesis is no panacea. He cannot walk normally with it. His gait is unsteady; stairs are  
2 difficult; and a thud follows every rotation of his left leg, as he lacks his knee. He cannot walk long  
3 distances. Nor can he run. Wet floors pose hazards and have made him fall. Even picking up items off  
4 the ground is laborious. Equally important, Ukau can no longer work in the only field he knows:  
5 construction labor.

6           Ukau's personal life has suffered, and he feels sad. He used to play volleyball and soccer,  
7 sometimes with his kids, sometimes with his friends. He no longer can engage in these sports activities.  
8 He also is unable to buy and carry groceries and water to their third floor apartment. In addition, he is  
9 unable to provide snacks for his children like he used to. Ukau still tries his best, but he is just not the  
10 same as he was before the accident.

11           So too has his family's life suffered. His children, in addition to being unable to play sports  
12 with him, have been teased because their dad is missing a leg. His kids once asked him when his leg  
13 will grow back so that he can go back to work and provide them snacks. Sinuk, his wife, is heartbroken  
14 to see Ukau the way he now is, and it has been hard on her.

15           **B. MEDICAL EXPENSES**

16           This injury has imposed substantial medical expenses on Ukau that are not covered by his  
17 insurance. He has one bill totaling \$10,898.11 (\$5 of which Ukau has paid), another totaling  
18 \$54,042.82, another \$16,772.63, another totaling \$26,984.06, and yet another for \$5. (Ex. 32.) Besides  
19 that one \$5 payment, the entire sum (totaling \$108,702.62) remains outstanding. (*Id.*)  
20

21           **C. POST-ACCIDENT PAYMENTS**

22           Entity and Wang made several payments to Ukau after his accident. Some of these payments  
23 were gifts, and others loans. The loan amount equals \$2,484.37, and they remain outstanding. *See*  
24 *supra* Part I.C.

1           **D. UNPAID OVERTIME**

2           Ukau worked every pay period from February 23, 2009, to July 5, 2011. (Ukau’s Testimony;  
3 Ex. 14.) His hours were long: He worked every day of the week, Monday to Sunday, from 7 a.m. to 6  
4 p.m. (Ukau’s Testimony.) He did not take any vacation time, and his only days off were due to illness.  
5 (*Id.*)

6           Entity had no records of Ukau’s working hours, any breaks taken, or his days off. This is  
7 because their record-taking and record-retention procedures were poor to non-existent. Records of  
8 hours worked were kept on an ad hoc basis, with Wang Fusheng (an Entity employee) handwriting  
9 Ukau’s hours on whatever paper he had in front of him, which sometimes was an envelope. (Wang  
10 Fusheng’s Testimony.) These records were not transferred to a more permanent ledger. (*Id.*) In 2011,  
11 Fusheng moved, and most records were either trashed or lost. (*Id.*) The only records produced in this  
12 case were attempted reconstructions years after the fact and two envelopes with numbers scrawled on  
13 them. (*See* Exs. 6–7, 14.)

14           The Court knows neither the number of sick days taken nor the time taken for lunch or other  
15 breaks. There is simply no evidence on either score, but both numbers almost certainly must exist. The  
16 Court therefore finds he was sick or otherwise absent four days throughout the year, and took one  
17 hour’s break each day.<sup>3</sup> Ukau thus accrued 1,280 hours of overtime in 2009, 1,520 in 2010, and 770  
18 in 2011. But he was not paid over half of those overtime hours. Instead, he was paid for only 220.5  
19 overtime hours in 2009, 701.5 hours in 2010, and 363.5 hours in 2011. He is therefore owed  
20 \$26,707.86 in unpaid overtime.<sup>4</sup>

21 \_\_\_\_\_  
22 <sup>3</sup> The Court acknowledges the weakness of this calculation: The only evidence it received on these points is that Ukau took  
23 an unknown number of days off when he was ill. The Court did the best with what it had.

24 <sup>4</sup> This is how the Court reached this number. It started with Exhibit 14, which detailed Ukau’s hourly and overtime wage  
rates, along with the amount of overtime that he was already paid. It also started with the finding that Ukau worked 10  
hours per day, every day of the week—so generally 70 hours every week—except for 4 days per year when he was absent.  
The Court then calculated how much overtime wages Ukau should have received. Here, the Court calculated the owed



1           **E. LOST INCOME**

2           Ukau’s expert testified that the best calculation of his lost wages, discounted to present value,  
3 is \$957, 216. (Hiles’ Testimony; Exhibit 10.) But this calculation is built on so many assumptions it  
4 cannot stand—to wit: that Ukau will never earn *any* money ever again; that Sinuk will not work more  
5 (or start working; we do not know whether she was already working at the time of the accident) to  
6 compensate for the lost income; that Ukau is entitled to the fringe benefit of Social Security, even  
7 though all evidence was that his jobs paid him cash-in-hand and that his current employer never  
8 withheld any taxes, whether income or Social Security; that absent the injury, he would have been able  
9 to continue as a construction labor until his 60s.

10           This figure is just too high. Without evidence of entitlement to Social Security, the Court finds  
11 he is not entitled to it.<sup>5</sup> Therefore, the present value of lost wages drops to \$797,390.22. It could drop  
12 even further—say if there was evidence that Sinuk will work more to increase the lost income. But no  
13 such evidence was put on. Accordingly, the Court finds lost wages of \$797,390.22.<sup>6</sup>

14  
15 \_\_\_\_\_  
16 overtime per week by multiplying the number of overtime hours for that week (30 in almost every week; 20 in a week  
17 where he was absent) by the overtime wage rate. (*See generally* Ukau’s Testimony; Ex. 14.) The Court then subtracted  
18 from this number the amount of overtime wages already paid. The difference is the amount of overtime owed.

19           The following are the specific numbers the Court found for each year. In 2009, Ukau was entitled to \$13,995.00  
20 in overtime pay, but received only \$2,459.63. He was therefore owed \$11,535.37 in overtime pay for that year. In 2010,  
21 Ukau was entitled to \$18,480.00 in overtime pay, but received only \$8,509.88. He was therefore owed \$9,970.12 in  
22 overtime pay for that year. In 2011, Ukau was entitled to \$9,900.00 in overtime pay, but received only \$4,697.63. He was  
23 therefore owed \$5,202.37 in overtime pay for that year.

24  
<sup>5</sup> Social Security benefits are not automatic. Rather, they must be earned by first contributing to the Social Security system  
through Social Security taxes. It is possible for a person to lack sufficient contributions such that they are not entitled to  
Social Security benefits. *See* Social Security Administration, Determining Insured Status (2005),  
[http://www.socialsecurity.gov/OP\\_Home/handbook/handbook.02/handbook-0201.html](http://www.socialsecurity.gov/OP_Home/handbook/handbook.02/handbook-0201.html) (“The number of quarters you  
have covered credits determine if you have enough credits for insured status.”); Social Security Administration, What  
Every Woman Should Know 18 (2013), <http://www.ssa.gov/pubs/EN-05-10127.pdf> (“If you have not worked or do not  
have *enough* Social Security credits and you are married, you may be eligible for Social Security benefits as a result of  
your spouse’s work.” (emphasis added)).

<sup>6</sup> This is how the Court reached this number. It began with table 4 of the expert report (Exhibit 10), which Ukau’s expert  
testified was the most accurate calculation. It then subtracted the discounted fringe benefits figure from this calculation.  
So, for example, the table’s fringe benefits in year 1 equaled \$5,448, and the present value factor for that year was .9872.



1 right to pursue a tort claim by instead limiting him to damages capped at the workers' compensation  
2 equivalent.

3 Estoppel has four requisite elements:

4 (1) the party to be estopped must be apprised of the facts;

5 (2) he must intend that his conduct will be acted upon, or act in such a manner that the  
6 party asserting the estoppel could reasonably believe that he intended his conduct to be  
acted upon;

7 (3) the party asserting the estoppel must be ignorant of the true state of the facts; and

8 (4) he must rely upon the conduct to his injury.

9 *Id.*

10 It is hard to see how these elements are satisfied, particularly the third element. Wang and  
11 Entity knew that they did not have workers' compensation insurance for Ukau. At best (for their  
12 defense), they honored Ukau's request to be paid in cash and treated him as an independent contractor.  
13 But even if so, Entity and Wang still knew they did not purchase insurance for Ukau. They therefore  
14 knew of the risk that he could be injured and that they could be liable—and they accepted that risk.  
15 Perhaps they even benefitted from this choice in the form of lower taxes or insurance premiums. The  
16 first element here also appears questionable: Ukau did not know Wang would injure him; he was not  
17 apprised of those facts.

18 Wang and Entity cite one case to support their equitable estoppel defense. (Defendants' Trial  
19 Brief at 8–9). This court stated that estoppel should be employed liberally to prevent “inconsistency  
20 in positions” in workers' compensation contexts. *See Marley v. M. Bruenger & Co.*, 6 P.3d 421, 423–  
21 24 (Kan. App. 2000). But Defendants stretch this language too far beyond that case's facts. That case  
22 regarded a worker who double dipped: He previously claimed he was an independent contractor and  
23 recovered damages for his injuries under an insurance policy for independent contractors, and he then  
24 claimed he was an employee and entitled to workers' compensation for those very same injuries. *See*

1 *id.* at 422–24. Ukau has not double dipped; he has not received compensation for his injuries in  
2 workers’ compensation but rather has elected to seek compensation solely in tort. Therefore, *Marley’s*  
3 reasoning does not apply here.

4 In short, workers’ compensation exists to protect both the employee and employer: the former  
5 by providing a modest sum without hassle; the latter by granting immunity from tort suits. *See* *Eston*  
6 *W. Orr, Jr., Note, The Bargain is no Longer Equal*, 37 *Ga. L. Rev.* 325, 325 (2002). Where an employer  
7 elects to hire an employee and not obtain workers’ compensation insurance for him, the employer  
8 knows the facts and accepts the risks of a tort suit. For these reasons, equitable estoppel is no defense  
9 here.

#### 10 **B. CO-EMPLOYEE IMMUNITY**

11 Wang correctly contends that she, as a co-employee, is immune from a tort suit under workers’  
12 compensation law. (Defendants’ Trial Brief at 5). Under Guam law, there is no cause of action against  
13 a co-employee. *See* 22 GCA § 9135. But this argument is narrow: She is immune only as a co-  
14 employee. She remains liable as Entity’s president, 22 GCA § 9140(a), which she concedes  
15 (Defendants’ Trial Brief at 7).

16 Wang further claims that one statutory section, Section 9140, limits damages against her to  
17 only the workers’ compensation equivalent. (*Id.*) This section limits an employer’s liability to “any  
18 compensation or other benefit which may accrue under the said Title . . . .” 22 GCA § 9140(a). This  
19 amount, she concludes, must be the workers’ compensation equivalent because “compensation” means  
20 workers’ compensation and that is what accrues under Title 22. (Defendants’ Trial Brief at 7.)

21 This argument misconstrues the statutory scheme. Another section of Title 22, Section 9106,  
22 gives an injured employee two compensation options where “an employer fails to secure payment of  
23 compensation . . . .” *See* 22 GCA § 9106; *see also id.* § 9103 (defining employer to “include[ ] any  
24

1 body of persons, corporate or unincorporated[,] . . . . [and] [i]t includes . . . [a] person who is in fact  
2 the proprietor[ ] or operator of the business”). This employee may seek “compensation under this  
3 Title” or she may “maintain an action at law . . . for damages . . . .” *Id.* So this section makes the  
4 employer (Wang) liable either for the workers’ compensation amount or for the actual damages  
5 amount. For this section (Section 9106) to have any meaning, Section 9140 cannot be read as limiting  
6 the employer’s liability to solely workers’ compensation. Otherwise, there is no point of suing in tort  
7 because, either way, the employee would be limited to the workers’ compensation amount.

8 This pragmatic reasoning finds support in Section 9140 itself. That section holds the employer  
9 liable for “any compensation or other benefit which may accrue under [Title 22] . . . .” *See* 22 GCA §  
10 9140(a). Because Title 22 explicitly allows for a tort claim, the tort damages here constitute “any . . .  
11 other benefit” that has accrued under Title 22.

12 In sum, Wang is liable in tort for all Ukau’s damages, and it is not capped at the workers’  
13 compensation equivalent.

### 14 C. NEGLIGENCE

15 Ukau must prove four elements to succeed on a negligence cause of action:

- 16 (1) A duty, or obligation, recognized by law, requiring the person to conform to a  
17 certain standard of conduct, for the protection of others against unreasonable risks of  
18 harm; (2) A breach of that duty, or failure to conform to the required standard; (3)  
19 Proximate cause (a close and causal connection, also known as legal cause); and (4)  
20 Actual loss or damage resulting to the interests of another.

21 *Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1, ¶ 12 (internal quotation marks omitted).

#### 22 1. Duty & Breach

23 Every person has a duty to use the care of a reasonable person to avoid injuring another person.  
24 *See* 18 GCA § 90101; *Fenwick*, 2009 Guam 1 at ¶ 12, Dan B. Dobbs et al., *The Law of Torts* § 127

1 (2d ed.). Therefore, Wang had a duty to use reasonable care to avoid injuring Ukau. Reasonable care  
2 requires, at minimum, that a truck driver “secure its cargo in a way that would prevent it from falling  
3 off the truck . . . .” *See Gaber Co. v. Rawson*, 549 S.W.2d 19, 22 (Ct. Civ. App. Tx. 1977); *see also*  
4 *Poffenberger v. Spriggle*, No. CX-90-1562, 1990 WL 212009, \*1 (Ct. App. Minn. Dec. 24, 1990)  
5 (unpublished) (not securing tailgate may be negligent).

6 Wang breached this duty. A reasonable person would have at least attempted to secure the steel  
7 plates or the tail gate. Wang made no such attempt. *See supra* Part II.A. A reasonable person would  
8 have also observed her surroundings while driving. Wang did not, as she drove into a cement wall.  
9 *See id.* Underscoring Wang’s breach of her duty is the fact that there was no urgency to act. She was  
10 not in danger of being hit by another car and needing quick action; she only needed to move her truck  
11 so that another car could pass by. *See id.*

## 12 **2. Proximate Cause**

13 Proximate cause is, at minimum, a but-for cause. *Fenwick*, 2009 Guam 1 at ¶¶ 13–14. It is  
14 satisfied here. But for Wang’s failing to secure the steel plates, those plates would not have fallen on  
15 Ukau’s leg, and he would not have suffered any injuries. Similarly, but for her failure to reasonably  
16 observe her surroundings and avoid hitting a cement wall, the steel plates would not have fallen out  
17 and Ukau would not have suffered any injuries.

18 Guam law also applies the substantial factor test to determine proximate cause; it does so only  
19 where there are two independent causes for the injury. *See id.* at ¶¶ 15–17. Assuming there are two  
20 independent causes here, Wang’s conduct is a substantial factor. The *only* reason he lost his leg, let  
21 alone a substantial reason, was because of Wang’s negligence. It was due to her negligent driving and  
22 her failure to secure the steel plates.

23 /

24

1                   **3. Damages**

2                   Because the other three elements are met, Ukau is entitled to damages. This is to be a  
3 reasonable amount that will compensate him for his harm and make him whole. *See id.* at ¶ 13.  
4 Damages include non-economic harms like pain and suffering and economic harms like medical  
5 expenses. *See He v. Govt. of Guam*, 2009 Guam 20, ¶¶ 69–84. Though technically doing so in another  
6 context, one Guam statute enumerates the full scope of economic and non-economic losses:

7                   (a) Economic loss shall mean any pecuniary loss resulting from harm, including the loss  
8 of earnings or other benefits related to employment, medical expense loss, replacement  
9 services loss, loss due to death, burial costs, and loss of business or employment  
10 opportunities, to the extent recovery for such loss is allowed under applicable local law. .

11                   . . .

12                   (c) Noneconomic loss shall mean loss for physical and emotional pain, suffering,  
13 inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of  
14 life, loss of society and companionship; loss of consortium, other than loss of domestic  
15 service; hedonic damages; injury to reputation and all other nonpecuniary losses of any  
16 kind or nature.

17 7 GCA § 6102; *Rutledge v. United States*, Civil No. 06-00008, 2008 WL 3914965, \*17 (D. Guam  
18 Aug. 21, 2008).

19                   First, economic damages. The Court already found that Ukau has \$797,390.22 in lost wages  
20 and \$108,702.62 in medical expenses. *See supra* Parts II.B, II.E. So he is awarded the same as  
21 damages.

22                   As for non-economic damages, awarding damages for physical impairment and loss of  
23 enjoyment of life are not duplicative. *See Scott v. United States*, 884 F.2d 1280 (9th Cir. 1989). Ukau  
24 has lost his leg. He suffers phantom pains. The immediate pain of the injury was no doubt tremendous.  
He can no longer help his family in the same way, and he can no longer play sports with his kids and  
friends. And even though he tries to remain upbeat, he cannot, and he has changed for the worse. But  
with time, some of these non-physical wounds should lessen. For instance, his kids will eventually

1 strike out on their own and will no longer need his physical help. And he certainly will not again feel  
2 the crushing pain and fears of death that he felt at the time of the accident.

3 The Court awards non-economic damages as follows. For past, present, and future pain and  
4 suffering, \$2,244,750 (\$150 per day); for his permanent physical impairment and disfigurement,  
5 \$1,750,000; for past, present, and future inconvenience and for lost enjoyment of life, \$1,496,500  
6 (\$100 per day).

#### 7 **D. LOSS OF CONSORTIUM**

8 Spouses of wrongfully injured persons have a derivative loss of consortium claim. *See*  
9 *Villanueva ex rel. United States v. Comm. Sanitation Sys., Inc.*, 2005 Guam 8, ¶ 32. To have this  
10 derivative claim, they must be married at the time of injury. *See Sprague v. Kaplan*, 572 A.2d 789,  
11 789–91 (Pa. 1990); *Doe v. Cherwitz*, 518 N.W. 2d 362, 364–65 (Iowa 1994); *see also Feliciano v.*  
12 *Rosemar Silver Co.*, 514 N.E.2d 1095, 1096 (Mass. 1987); *Leonard v. John Crane, Inc.*, 206 Cal. App.  
13 4th 1274, 1283 (Cal. App. 2012).

14 Because Sinuk and Ukau were married at the time of injury, Sinuk has a derivative claim for  
15 loss of consortium. The accident has changed Ukau for the worse, and dealing with that—how it has  
16 affected their relationship, their family, and their life—has been hard on her. (*See Sinuk’s Testimony.*)  
17 It breaks her heart. (*See id.*) The Court therefore awards Sinuk \$104,755 (\$7 per day).  
18

#### 19 **E. UNPAID OVERTIME**

20 Employers are liable in tort for all unpaid overtime compensation. *See* 22 GCA § 3117(2). This  
21 Court already found that Defendants neglected to pay Ukau overtime compensation that he was due.  
22 The Court therefore rules in favor of Ukau on his unpaid overtime claim and awards damages of  
23 \$26,707.86. *See supra* Part II.D.  
24



1           **F. PUNITIVE DAMAGES**

2           A plaintiff may recover punitive damages “where the defendant has been guilty of oppression,  
3 fraud, or malice, express or implied, the plaintiff, in addition to the actual damages . . . .” 20 GCA §  
4 2120. These damages are “for the sake of example and by way of punishing the defendant.” *Id.*

5           Ukau cannot recover punitive damages for his tortious injury. Defendants are not guilty of  
6 oppression, fraud, or malice. Wang’s culpability was that of negligence, nothing more. Accordingly,  
7 the Court will not award punitive damages on the negligence claim.

8           Nor will the Court award punitive damages on the unpaid overtime claim. The governing  
9 statute for unpaid overtime claims declares that punitive damages are appropriate only “in case[s] of  
10 [a] willful violation . . . .” 22 GCA § 3117(2). Willfulness, though not defined by statute, typically  
11 means that the employer “knew or showed reckless disregard for the matter of whether its conduct  
12 was prohibited by the statute.” *See McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988);  
13 *Desmond v. PNGI Charles Town Gaming, L.L.C.*, 630 F.3d 351, 358 (4th Cir. 2011).

14           There was no evidence of a willful violation here. Rather, the Court’s sense is that Wang just  
15 did not know any employment law, and she figured that whatever she and her employees bargained  
16 for was legally acceptable. She did not realize these errors until discussing it with legal counsel after  
17 Ukau’s accident. Maybe some could conjecture that she acted negligently, but there was no real  
18 evidence that she acted recklessly.

19           Ukau’s argument for punitive damages rings hollow. He bases it on another statute that  
20 purports to require treble damages for all wrongfully unpaid wages. *See* 22 GCA § 3219(a). But that  
21 statute cannot control here. That statute applies to all wage underpayments. *See id.* Contrastingly, the  
22 statute the Court finds controlling applies only to “unpaid minimum wages” and “unpaid overtime  
23 compensation” claims—which are the specific claims presented here. *See id.* § 3117(2). The principle  
24 of *lex specialis* demands “that a narrower, more specific provision of a statute takes precedence over

1 a more general provision of the same statute . . . .” *Camacho v. Estate of Gumataotao*, 2010 Guam 1,  
2 ¶ 19; *see also Ukau v. Wang*, 2013 WL 6037150, \*3, \*7 (D. Guam Nov. 12, 2013).

3  
4 **G. OFFSET**

5 Entity and Wang have asserted an offset defense. (*See* ECF No. 4 at 6.) Under this defense, a  
6 “creditor” can offset the value of plaintiffs’ debt from the judgment entered. *See* John J. Dvorske, 80  
7 C.J.S. Set-off and Counterclaim § 3; *see also Gratiot v. United States*, 40 U.S. 336, 370 (1841). To  
8 prevail on this defense, Defendants must be creditors. A creditor is someone who is “entitled to the  
9 payment of money.” *See* 20 GCA § 5102.

10 Defendants are creditors on some of their payments to Ukau. They are entitled to payment on  
11 their outstanding loans (but not gifts) to Ukau, which amounts to \$2,484.37. *See supra* Part II.C. Total  
12 Damages are therefore reduced by this sum.

13 **H. ATTORNEY’S FEES**

14 Guam law provides reasonable attorney’s fees and costs for maintaining an unpaid overtime  
15 claim. *See* 22 GCA § 3117(3). These are therefore awarded and will be determined at a later  
16 proceeding.

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#### IV. CONCLUSION

The Court finds Defendants Entity and Wang negligently caused Ukau's injury and failed to pay him the overtime he was due. The Court awards Ukau compensatory damages in the amount of **\$6,424,050.70**. This figure comprises the following categories of compensatory damages:

- **\$797,390.22** for lost wages;
- **\$108,702.62** for medical expenses;
- **\$2,244,750.00** for past, present, and future pain and suffering;
- **\$1,750,000.00** for permanent physical impairment and disfigurement;
- **\$1,496,500.00** for past, present, and future inconvenience and for lost enjoyment of life; and
- **\$26,707.86** for unpaid overtime.

Because Defendants negligently caused Ukau's injury and because Ukau and Sinuk were married at the time of that injury, the Court finds in favor of Sinuk on her loss of consortium claim. The Court awards compensatory damages of **\$104,755.00** for this loss.

The Court finds partially in favor of Defendants' offset defense. Ukau's total damages are therefore reduced by **\$2,484.37**.

In accordance with the foregoing findings of fact and conclusions of law, judgment is ordered entered (1) in favor of Ukau on his negligence and unpaid overtime claims against Defendants Entity and Wang in the amount of **\$6,421,566.33** and (2) in favor of Sinuk on her loss of consortium claim against Defendants Entity and Wang in the amount of **\$104,755.00**.

SO ORDERED this 26th day of June, 2014.



/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Jun 26, 2014