

1 REC'D HEARING EXAMINER
2 2021 SEP 17 PM 1:19

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6 **CITY OF SEATTLE**
OFFICE OF HEARING EXAMINER

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8 In the Matter of the Appeals of
9 Baja Concrete USA Corp., Newway
10 Forming Inc., and Antonio
11 Machado,
12 From a Final Order of the Director,
13 Office of Labor Standards.

Hearing Examiner Files:
LS-21-002, LS-21-003, LS-21-004
(consolidated)

**RESPONDENT BAJA CONCRETE USA
CORP.'S MOTION FOR ORDER STAYING
COLLECTION**

HER 2.16

Department Reference: 2020-00186-LS

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17 **I. ORDER REQUESTED**

18 COMES NOW Appellant Baja Concrete USA Corp. ("Baja Concrete"), pursuant to
19 Hearing Examiner Rules of Practice and Procedure ("HER") Section 2.16, through the
20 undersigned counsel, and submits this Motion for Order Staying Collection from Baja Concrete
21 of amounts asserted in the Final Order of the Director of the Office of Labor Standards ("OLS"),
22 dated August 25, 2021, in case No. CAS-2020-00186 (the "Determination"), pending the
23 outcome of this appeal and final adjudication as to liability.
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II. DISCUSSION

The Determination holds Baja Concrete liable, jointly and severally with other respondents named therein, for all amounts asserted in the Determination, and provides that “If Respondents fail to pay the full remedy of \$2,225,990.30 defined in this Director’s Order within 30 days of receiving this Order, OLS will pursue recovery of the listed amounts, plus attorney’s fees and costs through any means available¹.”

Given that three of the four respondents named in the Determination have filed appeals of the Determination, all of which specifically appeal, *inter alia*, the amounts alleged and the OLS finding that the respondents are actually employers of the workers at issue, based on the joint employer legal doctrine, it remains to be determined this appeal or subsequent appeal to the Superior Court, which respondents, if any, will actually be held liable for the amounts asserted in the Determination.

If OLS, or other City of Seattle department or agency, engages in actions to collect from Baja Concrete under the Determination, prior to a final adjudication as to liability, substantial and irreparable harm will result to Baja Concrete and unnecessary attorney fees and costs will be incurred.

III. RELIEF REQUESTED

Respondent Baja Concrete hereby requests that the Hearing Examiner grant the requested motion and issue an order staying collection from Baja Concrete of any amounts set out in the Determination pending final adjudication as to liability of such amounts.

¹ Page 36 of the Determination.

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Respectfully Submitted this 17th day of September, 2021.

MDK LAW

/s/ Mark D. Kimball
/s/ Alex T. Larkin

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CERTIFICATE OF MAILING

Department Reference: 2020-00186-LS

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 17, 2021, I served the following documents:

- 3 • Respondent Baja Concrete USA Corp.'s Motion for Order Staying Collection

4 on the persons noted below via the methods indicated:

5
6 Jeremiah Miller
7 Derrick De Vera
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Appellant

- via hand delivery
- via first class mail
- via certified mail with return receipt requested
- via Fedex Express Overnight
- via email
- Court E-Service

21 DATED: September 17, 2021

23 /s/ Mark Niehoff
24 Mark Niehoff, Paralegal