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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

**BAJA CONCRETE USA CORP.,
ROBERTRO CONTRERAS, NEWWAY
FORMING, INC., and ANTONIO
MACHADO**

from a Final Order of the Decision issued
by the Director, Seattle Office of Labor Standards

Hearing Examiner File:

Nos.

LS-21-002

LS-21-003

LS-21-004

DECLARATION OF NICOLE E. WOLFE
IN SUPPORT OF APPELLANT
NEWWAY FORMING INC.'S MOTION
FOR SUMMARY JUDGEMENT

I, Nicole E. Wolfe, declare and state as follows:

1. I am over the age of 18 years old and make this Declaration based upon my personal knowledge of the facts contained herein.
2. I am an attorney with Oles Morrison Rinker & Baker LLP and counsel for Newway Forming Inc.
3. Attached hereto as **Exhibit 1**, is a true and correct copy of OLS Findings of Fact, Determination, and Final Order dated February 5, 2021.
4. Attached hereto as **Exhibit 2**, are relevant excerpts from the transcript of the 30(b)6 deposition of Newway Forming Inc., dated May 5, 2022.
5. Attached hereto as **Exhibit 3**, are relevant excerpts from the transcript of the deposition of 30(b)(6) City of Seattle, dated April 28, 2022.

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6. Attached hereto as **Exhibit 4**, are relevant excerpts from the transcript of the deposition of Daron Williams, dated February 3, 2022.

7. Attached hereto as **Exhibit 5**, are relevant excerpts from the transcript of the deposition of Antonio Machado, dated February 1, 2022.

8. Attached hereto as **Exhibit 6**, are relevant excerpts from the transcript of the deposition of Mercedes De Armas, dated May 11, 2022.

I declare under penalty of perjury, under the laws of the State of Washington that the foregoing is true and correct to the best of my ability and knowledge

DATED this 1st day of July, 2022.

OLES MORRISON RINKER & BAKER LLP

By: s/Nicole E. Wolfe
Nicole E. Wolfe, WSBA 45752
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Attorneys for Appellant Newway Forming Inc.

CERTIFICATE OF SERVICE

The undersigned certified under penalty of perjury under the laws of the state of Washington that on this 1st day of July, 2022, I caused true and correct copies of the foregoing document to be delivered to the following parties and in the manner indicated below:

Office of the Hearing Examiner The Hon. Ryan Vancil, Hearing Examiner 700 Fifth Avenue, Suite 4000 Seattle, WA 98104	<input checked="" type="checkbox"/> E-File <input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: Hearing.Examiner@seattle.gov
Mark D. Kimball Alex T. Larkin MDK Law 777 108 th Ave. NE, Suite 2000 Bellevue, WA 98004 <i>Attorneys for Baja Concrete USA Corp.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: mark@mdklaw.com alarkin@mdklaw.com
Peter S. Holmes Seattle City Attorney Lorna Sylvester Cindi Williams Assistant City Attorney 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7095 <i>Attorneys for Respondents, The City of Seattle and the Seattle Office of Labor Standards</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: Lorna.sylvester@seattle.gov Cindi.williams@seattle.gov
Aaron Rocke Sara Kincaid Rocke Law Group, PLLC 500 Union Street, Suite 909 Seattle, WA 98101 <i>Attorneys for Appellant, Antonio Machado</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: aaron@rockelaw.com sara@rockelaw.com service@rockelaw.com

SIGNED at Seattle, Washington this 1st day of July, 2022.

/s/ Catherine A. Trimbour
Catherine A. Trimbour

EXHIBIT 1

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

In re Baja Concrete USA Corp, Roberto Contreras, Newway Forming Inc., and Antonio Machado

Respondents.

CASE NO. CAS-2020-00186

FINDINGS OF FACT,
DETERMINATION AND FINAL
ORDER

JURISDICTION

OLS initiated an investigation on May 22, 2020 for alleged violations of the Wage Theft Ordinance, SMC 14.20; Minimum Wage Ordinance, SMC 14.19; and the Paid Sick and Safe Time Ordinance, SMC 14.16 (Ordinances) by Respondents. The alleged violations involved work that took place in Seattle and occurred between February 2018 and August of 2020. Thus, the Office of Labor Standards (OLS) has jurisdiction over this matter.

PROCEDURE

OLS interviewed eight employees who received their pay from Baja Concrete USA Corp (Baja Concrete) for work performed at sites where both Newway Forming, Inc. (Newway Forming) and Baja Concrete operated. Baja Concrete provided services as a sub-tier subcontractor to Newway Forming at multiple sites in Seattle and the surrounding area.

OLS interviewed Respondent Antonio (Tony) Machado, who affirmed OLS' notes of his testimony in a signed statement with no edits or clarifications. OLS also interviewed a foreman for Newway Forming who had previously worked at the 1120 Denny Way site, a two-tower mixed-use development under construction in Seattle's South Lake Union neighborhood for which Onni Contracting (Washington) Inc. is the general contractor.

Respondent Baja Concrete did not make any of its officers or representatives available for an interview. Company president Claudia Penunuri agreed to an interview time by phone but did not answer OLS' phone calls at the appointment time or follow-up calls shortly thereafter. Ms. Penunuri also did not respond to a voice mail message or a follow-up email requesting a new interview time. Respondent Baja Concrete's representative, accountant Mercedes de Armas, failed to confirm an interview time with OLS but did respond to written questions and document requests on behalf of her client.

Respondent Roberto Soto Contreras¹ failed to respond to OLS' Requests for Information, its Subpoena, or its initial offer of settlement, nor was he represented by any attorneys or other representatives during the investigation. OLS was unable to interview Respondent Roberto Soto Contreras. Respondent Baja Concrete, through Ms. De Armas, referred to Respondent Roberto Soto Contreras as an 'independent contractor' and stated that he was employed by Baja Concrete, Ltd. in Canada, not by Baja Concrete USA Corp.

OLS submitted written Requests for Information to Respondents, as is its standard practice, and issued a Subpoena Duces Tecum when it did not receive complete and timely responses from all Respondents. As such, evidence reviewed in this case also includes the following documents:

- Written responses to Requests for Information from Respondents Baja Concrete and Newway Forming.
- Written responses to a Request for Information from Onni Contracting (Washington) Inc. prior to its dismissal from the case, along with a copy of the contract between Onni Contracting (Washington) Inc and Newway Forming.
- Payroll records provided by Baja Concrete.
- Newway Forming produced copies of Baja Concrete's invoices for payment, along with the underlying timesheets from the 1120 Denny Way site and two additional worksites in Seattle. The timesheets show the daily hours of work for Baja Concrete employees, on a Sunday – Saturday weekly calendar basis and reflecting two work weeks in each pay period / invoice period. The documents date from November 2018 to early June of 2020.
- Text message records from workers showing the hours they tracked and self-reported to Baja Concrete.

There was no overlap in documents produced by the different Respondents – for example, Baja Concrete provided payroll documents but failed to provide credible records of employee hours worked, but Newway Forming provided bi-weekly timesheets submitted to it by Baja Concrete along with invoices. However, Newway Forming did not produce the records of employees' individual timecards with their punch in and punch out times, which OLS learned it maintained in addition to the invoices and supporting timesheets submitted to it by Baja Concrete.

Despite its requests, OLS received no records related to Paid Sick and Safe Time.

Additionally, OLS did not receive the following subpoenaed information from any of the parties [Attachment E]:

- All written communications (including text and/or email) between Antonio Machado, Roberto Soto Contreras, Carlos Penunuri Ibarra², and/or any employee of Baja Concrete,

¹ Roberto Contreras and Roberto Soto are names by which Respondent Roberto Contreras is known. OLS refers to him as Roberto Soto Contreras throughout this Finding.

² Carlos Penunuri Ibarra was initially named as an individual Respondent when the Notice of Investigation was filed, and he was dismissed as a Respondent at the Director's discretion on December 8, 2020.

from 2017 to date of production pertaining to Baja Concrete and/or Newway Forming Inc., including but not limited to: ... requested sick leave for Baja Concrete employees, and the 1120 Denny Way, Seattle WA 98109 construction site.

- Documents sufficient to show the complete addresses of all buildings and construction projects/sites in Seattle on which Baja Concrete acted as a contractor or subcontractor from 2017 to the present, and the dates during which any of these entities or individuals acted as a contractor or subcontractor.
- All documents that relate to Baja Concrete's Paid Sick and Safe Time Policy, including records indicating when Respondents' employees can use Paid Sick and Safe Time; how they accrue Paid Sick and Safe Time hours; how much Paid Sick and Safe Time they can use each year; how much Paid Sick and Safe Time can employees carry over to the next year; how often Respondents notify employees of their Paid Sick and Safe Time balances; and how Respondents provide Paid Sick and Safe Time balance notification to employees.
- All documents that relate to Respondents' employees' use of Paid Sick and Safe Time hours for the period from January 12, 2017, to the date of production, including dates of PSST use and the amount of PSST used on each date.
- Employee phone numbers.

FINDINGS OF FACT

I. Parties

Respondent Baja Concrete is a concrete finishing company based in Miami, Florida, which performs work in Seattle and the surrounding region and employs approximately 20 people at a given time.

Respondent Roberto Soto Contreras acted as a hiring manager and representative of Baja Concrete. Roberto Soto Contreras exercised significant control over the workers and their pay; their Paid Sick and Safe Time; their hiring, firing, and discipline; and their housing, transportation to and from work, and their personal identity documents. Roberto Soto Contreras did not participate in this investigation.

Respondent Newway Forming is a concrete forming company based in Canada, with an office in Lynnwood, Washington. Newway Forming employs over 500 workers worldwide.

Respondent Antonio Machado³ is one of Newway Forming's two site superintendents at 1120 Denny Way in Seattle. In the interview OLS conducted with Respondent Machado on October 20, 2020, he stated that he had been working at 1120 Denny Way for "three years, as

³ Antonio Machado is also known as Tony Machado and employees generally referred to him as Tony in their interview statements.

superintendent.” Respondent Machado exercised significant control over the employees’ hours, schedules and whether they worked overtime, and he directly supervised both the Newway Forming foremen and the Baja Concrete representative who directed the employees’ day-to-day work.

The work at issue took place primarily at 1120 Denny Way, Seattle, 98109; some of Respondents’ employees also performed work at two other sites within Seattle city limits: 707 Terry Avenue, Seattle, and 2014 Fairview Avenue, Seattle.

Per its contract with Onni Contracting (Washington) Inc., the owner and developer of the site at 1120 Denny Way, Newway Forming, was scheduled to begin work at the site on August 28, 2017 as a concrete formwork subcontractor.

Baja Concrete was hired for cement finishing of Newway concrete pours and commenced work at 1120 Denny Way in February of 2018, per timesheet records originally created by Baja Concrete and provided to OLS by Newway Forming during the investigation.

II. Respondents all employed the employees in this case.

There is no dispute that Respondent Baja Concrete employed the employees listed on Attachment B. However, OLS has concluded that Respondents Newway Forming, Roberto Soto Contreras, and Antonio Machado jointly employed the cement finishers, carpenters, and laborers who received their pay through Baja Concrete.

A. Newway Forming, Baja Concrete and their supervisors all exercised extensive control over the employment relationship with employees.

Several employees who provided testimony to OLS stated that they were hired by Respondent Roberto Soto Contreras. The employees testified that prior to spring of 2019, Roberto Soto Contreras did not work at the 1120 Denny Way site. They testified that Roberto Soto Contreras recruited them, arranged for their travel to Seattle, managed their housing, kept their identification documents, drove one of the vans which brought them to work, and picked them up from work. Also, as previously discussed, Respondent Baja Concrete processed payroll and paid most of the employees. It also billed Newway Forming for all the employees’ hours, regardless of whether they were formally on Baja Concrete’s payroll.

However, Respondents Roberto Soto Contreras and Baja Concrete did not direct the employees’ day-to-day work or set their schedules. The employees described Respondent Roberto Soto Contreras’s role prior to May of 2019 as that of a labor broker providing Newway Forming with a supplemental workforce. One employee stated that “[m]ost times Newway [Forming] would tell Roberto that we would be done at 6pm and he would come pick us up. That changed once [Newway Forming foreman] Pedro left and then Roberto would work on the site and then we would leave together at the end of the day. Newway [Forming] would tell us what hours we would work.” It was Newway Forming that controlled the work the employees did at the 1120 Denny Way Site.

i. Work schedules were set by Newway Forming.

Respondent Antonio Machado's testimony indicated that Respondent Newway Forming controlled the employees' hours of work, and that Respondent Baja Concrete had a minimal role in determining employees' schedules and whether they worked overtime. When asked if Newway Forming foremen coordinated with Respondent Roberto Soto Contreras regarding how many hours the employees paid through Baja Concrete would work in a day, Machado responded, "No, the [Newway Forming] foreman figures out how long they work. It's hard to predict sometimes which days will go late. At the end of the day we all stay late. Sometimes we work eight hours, sometimes nine, ten. You've got to work as we need, that's how we work."

Respondent Antonio Machado further testified that, "If a guy got sick he would call Roberto [Soto Contreras] to come and pick him up, and he'd tell the Newway [Forming] cement finisher foreman that he didn't feel good and he had to go home." Respondent Antonio Machado's testimony indicates that the Newway Forming foreman was the supervisor who needed to be notified that the employee could not continue his shift, and that Respondent Robert Soto Contreras' role was to transport the employee home. The employees' practice of notifying their Newway Forming foreman of their need to leave the jobsite further reflects Newway's role in supervising their work and hours.

Employees testified that the only time Respondent Roberto Soto Contreras was involved in setting their schedules was to reduce their hours if they called in sick. One employee testified that "[w]hen I was sick one day... he punished me for being sick. He wouldn't let me work the next day because I called out sick." Several other employees stated that they had also been instructed not to work for at least one day after calling in sick, and some alleged that more of their pay had been withheld than could be accounted for by the number of days they were out sick or instructed not to work.

ii. Meal and rest breaks were set by Newway Forming.

Respondent Newway Forming also determined when, how often, and for how long employees would take their meal and rest breaks. When asked who the employees would talk to about their breaks, Respondent Machado answered, "We all have a timed break for the whole site, at 10:00 we stop for half an hour, and at 12:00 for another half hour, everyone stops, all the trades, unless we have a concrete pour and have to work through the break or take it earlier or later. Each group's foreman would let them know."

This was consistent with the employees' testimony that they most often received two breaks each day regardless of the length of their shift. One employee who was paid through Baja Concrete stated that the breaks he received were "[j]ust the ones that Newway [Forming] gave to everyone under them at the site, 10:00 – 10:15 and 12:00-12:30. The other companies had different hours." Testimony varied slightly as to whether the morning break was 15 minutes or 30 minutes. The employees stated that they never received more than two breaks in a day regardless of the length of their shift; this is discussed in further detail in Section II.D.

iii. Newway Forming directed employees' work at Seattle worksites.

In addition to controlling employees' schedules, Respondent Newway Forming foremen directed Respondent Baja Concrete employees' daily work at multiple sites in Seattle, generally without a supervisor from Baja Concrete present.

Employees testified that prior to May of 2019, they received their task instructions from the Newway [Forming] foreman for their respective crafts. Indeed, as Antonio Machado told OLS, Newway Forming's foreman would "tell [Baja employees] 'after we're done with that, we're gonna do this.' You've got to give them directions to get the work done."

Employee testimony is uniform that Respondent Roberto Soto Contreras simply dropped off and picked up the employees prior to approximately May 2019, when he began reporting to the 1120 Denny Way site and working as a cement finisher, according to the timesheets submitted by Baja Concrete to Newway Forming.

When asked who from Baja Concrete directed the employees on site, Antonio Machado replied, "Those guys would come to the Newway [Forming] foremen and the [Newway Forming] foremen would guide them and give them directions, what to work on, when to go home. Sometimes concrete comes late or it's slow and you have to stay late, it's not uncommon for us to work ten hours in a day and the foremen let them know how late to stay."

An employee testified that Pedro Ruvalcaba, a Newway [Forming] foreman for the concrete finishers at 1120 Denny Way, directed his work. The employee stated, "It felt like we rented for Newway [Forming] because we were always working with Newway [Forming]. We would always report to Newway [Forming]. [When w]e would arrive for the day there would be a paper with our names and that's how we would mark the day and hours. There was a person in charge of our work each day and it would be with and/or Tony [Machado]. Every morning we would arrive, Pedro [Ruvalcaba] would direct our work and tell us to go work on certain areas."

Another employee testified that Victor (whose last name the employee did not know), a Newway Forming foreman for the laborers at the 1120 Denny Way site, directed his work. He stated, "Victor would tell us how to work (what to work on for the day) and [where] to clean. He was in charge of my work every day. Victor would tell us what time to come in and where to be. He would be in charge of discipline of workers as well. He would tell me days to take off to rest if I asked. Roberto [Soto Contreras] would mostly be in charge of paying us and he never paid overtime."

Employees testified that after May of 2019, Respondent Roberto Soto Contreras did start accompanying them to the work site as a putative foreman for the crew. The employees stated that even after he nominally gained supervisory power, he passed down directions received from Newway Forming foremen, particularly Respondent Antonio Machado. These claims are further supported by Respondent Antonio Machado's assertion in his interview that there were never any managers from Baja Concrete present at the 1120 Denny Way site.

For the other two Seattle sites, 707 Terry Avenue and 2014 Fairview Avenue, no supervisors from Baja Concrete were present to direct the work, and employees consistently took their instruction exclusively from Newway Forming foremen. One employee, when asked who

directed his work at the Fairview site, replied, “Ivano [from Newway Forming], the jefe [boss]. Roberto was just the guy that hired us,” and when asked if there were any foremen for Baja at his site, he stated that “Roberto would come maybe two times a week just to check things out, maybe 20 minutes each visit.”

iv. Respondent Roberto Soto Contreras jointly controlled the employment relationship with employees.

Respondent Roberto Soto Contreras recruited, hired, and fired employees and determined their rate of pay. He also billed Respondent Newway Forming for the employees’ labor and submitted their hours to the accounting firm. Respondent Baja Concrete stated that Respondent Roberto Soto Contreras was responsible for hiring decisions, together with company president Claudia Penunuri.

Respondent Roberto Soto Contreras controlled the employees’ rates of pay. Respondent Roberto Soto Contreras worked directly with the accountant who processed payroll for employees paid through Respondent Baja Concrete, providing her with the information regarding how many hours they worked. When employees had issue with their pay, including rate of pay and their right to overtime pay, they primarily (but not exclusively) raised it with Respondent Roberto Soto Contreras. Employees testified that if they spoke to him about this he typically responded that they were welcome to look for other work, or else he would yell at them and call them names.

Respondent Baja Concrete had no other managerial, human resources, or operations staff to whom the employees could bring their concerns. Baja Concrete is owned by Claudia Penunuri, a real estate agent in Miami, Florida, with whom the workers had little-to-no contact. Respondent Roberto Soto Contreras was the sole representative of Baja Concrete in the Seattle area with any managerial authority. Furthermore, Respondent Baja Concrete stated that it had no written policies and that all policies were ‘verbal’, which meant that Respondent Roberto Soto Contreras’ statements carried the weight of company policy.

Respondent Roberto Soto Contreras instructed employees to work the hours and schedules assigned to them by their Newway foremen and report back to him about how much they worked. He also exercised direct control of their schedules at times. As noted above, employees testified that his practice any time an employee called out sick was to remove the employee from the schedule for several additional several days as a punitive measure.

Additionally, Respondent Roberto Soto Contreras had a high degree of control over employees pay by Baja Concrete in that he controlled their housing and transportation and determined the rates they were charged for both. These costs were deducted directly from their paychecks without prior written authorization (see Section III.E). Respondent Roberto Soto Contreras also took possession of the employees’ identity documents upon their arrival in Seattle.

v. Respondent Antonio Machado jointly controlled the employment relationship with employees.

Respondent Antonio Machado acted as one of two site superintendents for Respondent Newway Forming at 1120 Denny Way. Testimony reflected that Respondent Antonio Machado set hours of work for employees regardless of whether they were paid through Newway Forming or through Baja Concrete. He supervised and directed the Newway foremen who oversaw the employees' work.

The employees testified that Respondent Roberto Soto Contreras' transition from labor broker to putative foreman was determined by Respondent Antonio Machado, with one employee stating that, "[i]nitially there was a foreman named Pedro from Newway who controlled and directed the finishers, but then Tony Machado talked with Roberto and Roberto said that he was going to have all the power over the people from his own company, and that's when he started yelling at us all the time and telling us what to do."

Respondent Antonio Machado directed Respondent Roberto Soto Contreras at the 1120 Denny Way worksite. The employees testified that Respondent Roberto Soto Contreras' role at the site was primarily to pass along directions from Respondent Antonio Machado, much like the Newway Forming foremen who supervised the employees' day-to-day work. When asked who directed his work, the employee stated "[a]t first, [Newway foreman] Pedro [Ruvalcaba] but at Tony's direction, then Roberto but he took all his orders from Tony Machado." As noted above, Respondent Antonio Machado himself testified that there were never supervisors for Baja Concrete present at the 1120 Denny Way worksite.

Employees testified that Respondent Antonio Machado sometimes instructed Respondent Roberto Soto Contreras to fire specific workers and that this happened on at least two occasions.

B. The employees' services were an integral part of Newway Forming's business.

Per Respondent Newway Forming, Respondent Baja Concrete provides finishing for Newway's concrete pours, an essential aspect of Newway Forming's role in the overall build. The subcontract between Onni Contracting (Washington) Inc. and Newway Forming required Newway Forming to "provide all concrete pumping, pouring, placing and finishing including all tools & equipment for all concrete per the Contract Documents." The subcontract further specified that "The Subcontractor shall take whatever steps are necessary, including additional labor force or shift work or overtime, at its sole cost, to achieve the completion date." Respondent Newway Forming relied on employees paid by Respondent Baja Concrete to provide cement finishing services for Newway Forming's concrete pours.

C. Employees used the premises and equipment of Newway Forming to complete their work.

During the period covered by the investigation, February 2018 and August of 2020, employees paid by Respondent Baja Concrete performed all of their work at four construction sites under the direction of Respondent Newway Forming.

While Newway Forming operated at additional locations in Seattle and the surrounding area without Baja Concrete's involvement, Baja Concrete did not operate at any jobsites where Newway Forming was not present. This is discussed further in Section [E] below.

The majority of the work took place at 1120 Denny Way in Seattle, a development managed by general contractor Onni Contracting (Washington) Inc. Additional work took place at 2014 Fairview Avenue and at 707 Terry Avenue, development projects in Seattle managed by general contractor companies Bosa Properties (USA-Seattle) Inc. and Graham Construction and Management, Inc., respectively. Baja Concrete also operated at the 'One88' high-rise apartment project developed by Bosa Development Washington Inc. at 188 Bellevue Way, outside of OLS' jurisdiction.

Further, employees' hours were recorded using Newway Forming equipment, see Section [D] below.

D. Newway Forming played a significant role in the preparation of payroll and the payment of wages to employees.

Employees paid through Respondent Baja Concrete were required to start their days at Respondent Newway Forming's on-site office at 1120 Denny Way, in order to record their hours of work using Newway Forming's time tracking systems. Initially, employees tracked their hours by handwritten time cards; Newway Forming later implemented a timeclock system which the workers used to record their hours.

When asked if workers paid through Respondent Baja Concrete used the same time tracking system as Respondent Newway Forming employees, Respondent Antonio Machado affirmed that "[e]veryone has a card he puts there to punch in. They clock in and out every day. It's inside our office here on site. We have an office here for my P[roject] M[anager], and we have a clock hanging there. This is how we've done it for a year and a half. Before that, timecards. Every employee would do this. When a guy walks in, he goes into the office and writes the time he starts in the morning, goes in to write the time he leaves in the evening. Each day of work they would do that. Now it's the timeclock."

Respondent Newway Forming provided OLS with invoices and accompanying timesheets as submitted to it by Respondent Baja Concrete, but Newway Forming did not provide its timeclock records in response to OLS' subpoena or at any other point during the investigation.

Respondent Newway Forming staff verified and signed off on billed hours using their own records before paying Baja Concrete's invoices. Respondent Newway Forming stated that it implemented this practice to verify the billing submitted by Respondent Baja Concrete.

Respondent Newway Forming's invoice payment approval process involved reviewing invoices with supporting timesheets from Respondent Baja Concrete and verifying the time billed against its own timeclock records for each worker. These timesheets listed each worker's daily hours in each work week and they formed the basis for the workers' pay. Respondent Antonio Machado testified that Respondent Baja Concrete based its billing on Newway Forming's records of the employees' hours: "Roberto would come here Monday mornings, check how many hours his guys worked, and make out the invoice according to the hours his guys worked." Workers testified that they also texted their hours to Respondent Roberto Soto Contreras via Whatsapp, but the Newway Forming timeclock and timesheets appears to be the primary source for determining the hours worked by employees.

Timesheets from 2018 reviewed by OLS bear two Newway Forming personnel signatures: a Newway Forming crew foreman, such as Pedro Ruvalcaba and an approver, such as Chris Birtch, a construction manager for Newway Forming (often signed as 'Chris B.'). No signatures from any Baja Concrete representatives are on these documents.

Many of the submitted timesheets for the 1120 Denny Way site in 2018 and 2019 were reviewed and signed by Craig Kuchel, Newway Forming's other site superintendent for the 1120 Denny Way site, and later by Tom Grant, Newway Forming's Senior Project Manager for the site. Some of the timesheets signed by Tom Grant bear an additional note by his signature "Chkd [sic] against time cards."

E. Baja Concrete and Newway Forming were closely related businesses, and employees worked for both entities for significant periods of time.

Respondent Baja Concrete was officially incorporated in Florida on September 15, 2017, and registered in Washington on May 1, 2018. Respondent Baja Concrete has no local office (all documents list either the business address in Miami, the apartment where Respondent Roberto Soto Contreras lived, or the accountant's office in Bellevue) and it has no website describing or advertising its services to prospective clients.

Onni Contracting (Washington) Inc's subcontract with Respondent Newway Forming for the project at 1120 Denny Way states that Newway Forming's work on the project was required to commence on August 28, 2017. Respondent Baja Concrete began submitting invoices to Respondent Newway Forming for work at the 1120 Denny Way site in February of 2018.

Shortly after Respondent Baja Concrete incorporated in Florida in September of 2017, it began operating in Western Washington at construction sites where Respondent Newway Forming was present. One employee on Baja Concrete's payroll testified that, on or around November of 2017, he began working at One88, a project by general contractor Bosa Development Washington Inc.⁴ located at 188 Bellevue Way NE in Bellevue, for which Newway Forming provided concrete formwork. This employee first officially appears in Baja Concrete's payroll records in March of 2018.

⁴ This differs from the Bosa entity listed above in connection with 2014 Fairview Avenue, Bosa Properties (USA-Seattle) Inc., since different entities own the respective properties under development.

According to Respondents Newway Forming and Baja Concrete, no written contract exists between the two companies.

Respondent Baja Concrete appears to work exclusively for Respondent Newway Forming. OLS has not identified any sites in Washington where Respondent Baja Concrete performed work without Respondent Newway Forming being present, and it has identified a total of three sites in Seattle where Baja Concrete billed Newway Forming for work performed. When asked to identify all sites in Seattle where Respondent Baja Concrete had performed work between 2017 and 2020, Respondent Baja Concrete did not claim to contract with or invoice any company other than Newway Forming. In a response to OLS on July 31, 2020, Respondent Baja Concrete listed 1120 Denny Way and “Bossa” [sic], presumably meaning general contractor Bosa’s One88 project in Bellevue, as the only sites where it performed work with Newway between 2017 and 2020. Respondent Baja Concrete did not disclose its previous work at 707 Terry Avenue or its ongoing work at 2014 Fairview Avenue.

Respondent Baja Concrete invoiced Respondent Newway Forming for labor at the 707 Terry Avenue site consisting only of work performed by four workers on a single date, February 16, 2019, to complete pouring work which had been rescheduled due to inclement weather. This was the only work which employees paid through Respondent Baja Concrete performed at 707 Terry at any point in the time period investigated. The site at 707 Terry Avenue is located approximately one mile from the site at 1120 Denny Way.

At the 2014 Fairview site, invoices from June 2019 through June 2020 reflect only one-to-two workers present in most pay periods (with a notable exception in January 2020) before scaling up in June of 2020. The site at 2014 Fairview Avenue is located approximately 1.5 blocks from the site at 1120 Denny Way.

In response to a public information request, the Washington Labor & Industries Division of Occupational Safety and Health provided OLS with records related to several safety inspections of Newway projects. The records related to Inspection number 317954602 from an inspection on July 10, 2019 at 1120 Denny Way include employee sign-in sheets for a site-wide safety meeting on March 21, 2019. Three employees who were on Respondent Baja Concrete’s payroll listed their company as Newway on the sign-in sheets, though each spelled it slightly differently. No employee present at the March 21, 2019 Site Safety Stand Down meeting listed Baja Concrete as their company, out of eleven pages (not all full) of sign-in sheets reflecting workers for various companies operating at the site.

F. Baja Concrete and Newway Forming were financially closely integrated.

Workers testified that they believed Respondents Roberto Soto Contreras and Antonio Machado had a kickback arrangement for a share of Baja Concrete’s profits. One worker stated, “... the concrete finishers at Newway [Forming] earned more money, like \$35 per hour, and the Baja [Concrete] people were only making \$18 per hour, and I think that Roberto and Tony kept some of the difference.”

Another worker testified that Respondent Roberto Soto Contreras asked him to do a calculation to determine 8% of a total. The worker didn't recall the initial total provided to him but recalled performing the calculation and providing the result to Respondent Roberto Soto Contreras. The worker stated "I know that the money was going to Tony, it was about \$2,000. Roberto was paying everyone else and then 8% of what everyone got paid, was paid to Tony."

OLS located record of a payment from Respondent Baja Concrete to Respondent Antonio Machado in the amount of \$4,878.00 on August 8, 2019. The payment is categorized as 'Reimbursement' and the memo line notes 'Receipt pending' with no further details. The address listed for the payee matches the address which Respondent Newway Forming listed for Respondent Antonio Machado in its initial RFI response. A copy of the check was included in a box of payroll records mailed by Mercedes de Armas to OLS but was not included in payroll summary information that was provided digitally.

None of the Respondents have provided any explanation for this check, and Respondents Baja Concrete and Antonio Machado – the two parties to the transaction – denied knowledge of the check's existence, on the record.

In July of 2019, Respondent Baja Concrete invoiced Respondent Newway Forming a total of \$122,476.00 for 1120 Denny Way (including a \$400 charge for tool reimbursement) and \$5,610 at Fairview Avenue that month. On the pay dates reflecting hours worked in July (pay dates 7/19/2019 and 8/2/2019) workers from 1120 Denny Way were paid a gross total of \$62,094.93 according to Baja payroll records. Two payments of \$1,000 each to Claudia Penunuri are not counted in this total. Eight percent of this figure is \$4,967.60, within \$90.00 of the amount paid to Respondent Antonio Machado.

III. Respondents failed to pay wages or provide paid sick and safe time.

A. Overtime

Employees reported that they were paid straight time for all hours worked, including hours which exceeded 40 hours in a workweek.

The timesheets OLS reviewed indicate that the workweek ran Monday through Sunday, and that employees often worked six days per week, Monday through Saturday. Timesheets submitted with invoices by Baja Concrete to Newway Forming showed that employees worked up to 151 hours in a biweekly pay period. While most pay periods involved fewer hours, most workweeks exceeded 40 hours.

Employees' pay stubs often did not list overtime hours, and even on the rare occasions they did, the listed hours were far fewer than what the employee had worked according to the timesheets. Additionally, pay stubs often didn't include the number of hours worked; sometimes falsely stated that the employees had performed only 80 hours of work when timesheets showed significantly more; listed hourly rates of pay which changed in each pay period; and indicated that compensation was sometimes paid hourly, sometimes in piece rate (without any unit

specified), and sometimes in bonuses. Employees testified that they were always paid hourly and never received bonuses, nor did they ever work for piece rate. Employees stated that they rarely received pay stubs, if ever.

Sometimes, pay stubs listed ‘bonuses’ as one of several, or as the only, form of compensation in a given pay period. For example, one worker was paid a ‘bonus’ of \$1,814.00 on February 27, 2019, where the bonus was the only form of compensation paid on that pay date. However, the payment was for hours worked despite the ‘bonus’ designation. In the biweekly period represented by this pay date, timesheets reflected that this worker performed 95.5 hours of work at 1120 Denny Way. The pay stub did not list the hours worked, and overtime pay was not accounted for in the wages.

B. Non-Payment of Wages

OLS discovered several pay periods where there were hours worked listed on an employee’s timesheets, but no corresponding paystubs showing payments made to that employee. Additionally, there was no record of certain employees’ names or hours worked on the Respondents’ payroll records, even though they were listed on the timesheets.

When OLS inquired about the discrepancy between the paystubs and timesheets, Respondent Baja Concrete disputed that it employed some employees listed on the timesheets which Respondent Baja Concrete submitted to Respondent Newway Forming who were not reflected in Baja Concrete’s payroll records. Respondent Baja Concrete offered no explanation for why it invoiced Newway Forming for the work of these individuals. Representatives of Respondent Newway Forming signed off on timesheets which included these disputed employees, and this included timesheets on which Respondent Newway Forming’s representatives had written “chk [sic] against time cards,” indicating that it verified the hours worked by those employees. Respondent Baja Concrete failed to provide evidence that it paid these employees for any of their hours.

Respondents failed to provide contact information for employees, including those listed on the timesheets, but not on payroll. OLS issued a subpoena to acquire the missing contact information and did not receive the information requested. OLS was unable to contact additional witnesses to gather more information about the non-payment of wages.

C. Minimum Wage

Upon reviewing Respondents’ payroll records, OLS observed several instances where the bi-weekly gross wages divided by the total hours worked for a pay period was less than \$15.00 per hour in 2018, less than \$16.00 per hour in 2019, or less than \$16.39 per hour in 2020.

D. Meal and Rest Breaks

Records support that the workers often worked in excess of eight hours, including occasional days as long as nineteen hours of work for some of the laborers in the group.

Employees testified that they did not receive additional paid rest breaks or unpaid meal breaks when working these longer shifts. One employee reported that, “We were given two breaks, one from 10am – 10:30am, then the other 12:30pm to 1pm, one was paid each time. It would be the same amount of breaks and time each day regardless if it was an 8-hour day or a 14-hour day... we wouldn’t get a break even once, [on the] days we started at 3:30am. On those days we would just [be] eating crackers from our pockets.”

E. Deductions

Respondent Baja Concrete provided payroll records reflecting \$84,687.70 in deductions from employees’ paychecks between January 2017 and June 2020. Baja Concrete characterized these as ‘payroll advances’, though records and testimony indicate that many of these deductions reflected the employees’ monthly housing and transportation costs, and occasionally airfare.

Employees testified that they never authorized any deductions from their paychecks. Respondent Baja Concrete did not produce any written authorizations for any paycheck deductions in its payroll records, nor did it produce any records related to supposed loans to employees which were repaid through paycheck deductions. In response to OLS’ request for any such records, Respondent Baja Concrete stated only that “We do not have any complaints from any employee regarding the deductions.”

Deductions categorized as ‘Advance R’ corresponded with the workers’ testimony regarding rent deduction amounts and frequency. They ranged from \$200 to \$490 monthly, but the most common charges were \$350 and \$440 per month.

Individual workers’ rent deductions did not vary over time based on the number of people sharing an apartment. An employee testified, “There were between ten and twelve people living there. Some people slept in the kitchen. This was a 3-bedroom apartment. Three people in one bedroom, three of us in the other, another three in the third bedroom, and a couple people in the kitchen. Everybody paid [rent]. Before we started, Roberto would tell everyone that the first month was free, but it was not free.” Payroll records showed that the monthly rent amount deducted from this worker was always consistent despite changes in the number of people residing in that unit.

With between six and twelve employees per unit being charged on average \$400 per month, the costs charged to the employees may have significantly exceeded the cost of the apartment units. As of May 2021, the rental range for units at the apartment complex where the employees resided was advertised at apartments.com as \$1,390 - \$2,780 per month for 1-3 bedroom units, with 3-bedroom units starting at \$2,110 per month according to the apartment complex’s own website.

By contrast, deductions for gas charges for Seattle employees fluctuated significantly even when the number of employees sharing transportation costs was relatively consistent. Respondent Baja Concrete deducted gas costs in the following total amounts: \$300 between six employees in April of 2019; \$755 between seven employees in October of 2019; \$450 between seven employees in November of 2019; and \$830 between six employees in January of 2020.

(Employees were charged every month; these figures are sampled to show the fluctuations in charges.)

F. Paid Sick and Safe Time (PSST)

1. Notice of Rights

In its response to OLS' Initial Request for Information, Respondent Baja Concrete failed to provide evidence that it posts a Seattle Workplace Rights poster at locations where its employees work.

2. Policy

Respondents did not provide OLS with a copy of any PSST policy; per Respondent Baja Concrete, a policy manual was 'under development' and in the meantime all policies were verbal. Employees were not aware of any sick leave policy, and they testified that Respondents did not provide sick leave.

3. Accrual

Employees testified that they did not accrue PSST per hour worked, and pay stubs prior to March of 2020 did not show any PSST accrual or balance. Respondent Baja Concrete's reply to OLS' initial request for information claimed that PSST was "prepaid, any time Employee needed. Included in the Project EE amount. Prepaid sick pay until March 2020." Respondents did not provide any written description of this "pre-paid" arrangement or of the amount or percentage of pay which was specifically the "pre-paid" PSST portion.

4. Notification

Employees testified that they did not receive any notification of sick leave used or accrued within the pay period each time wages were due. Pay stubs produced by Respondent Baja Concrete did not show any PSST accrual or balances until March of 2020.

5. Use

As noted above, when employees needed to leave work mid-shift due to illness, Respondent Antonio Machado described that the employees' practice was to contact Respondent Roberto Soto Contreras for him to come pick them up and to notify whichever Newway foreman who directed their work that they needed to leave the jobsite.

Employees testified that they were never paid when they missed scheduled days of work due to illness. In January of 2020, an employee testified that, "We have all been sick lately with all the rain, if we miss a day it's just a day that we don't get paid for. If we called out we wouldn't get paid for that day, sometimes they would take more than they were supposed to even, so we would all work sick. I never pay attention to exactly how much they were taking out from the total but I noticed there would be a big difference, definitely bigger than one day. Now I work even if I'm sick. We all do."

OLS reviewed pay stubs dating between February of 2018 and August of 2020, and found only one instance where an employee was paid from their PSST balance. This occurred in one pay

period, for the pay date on August 28, 2020, which was several months after OLS initiated its investigation.

DETERMINATION

I. Joint Employment

The Paid Sick and Safe Time, Minimum Wage, and Wage Theft Ordinances apply to employment relationships where a covered employee has multiple, simultaneous employers. Employers are “any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof” who “employs another person....” SMC 14.16.010; SMC 14.19.010; SMC 14.20.010.

Under the Ordinances, employers explicitly “include[] any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee.” SMC 14.16.010; SMC 14.19.010; SMC 14.20.010. And “more than one entity” may simultaneously be an employer of any employee, if employment by each employer “is not completely disassociated from” employment by the other employers. *Id.* Such an arrangement is generally known as joint employment.

Joint employment relationships generally exist when an employee performs work that benefits two or more employers. OLS follows court-created law in determining whether multiple entities jointly employ employees. OLS reviews the relationship between the employee and putative employers using the “economic realities” test, *Becerra v. Expert Janitorial, LLC*, 181 Wn.2d 186, 196 (2014), which “depends upon all the facts in the particular case.” Seattle Human Rights Rules (SHRR) 90-045(3).

No one factor is dispositive; the “factors are not exclusive and are not to be applied mechanically or in a particular order. As the United States Supreme Court noted long ago, ‘[T]he determination of the relationship does not depend on such isolated factors but rather upon the circumstances of the whole activity.’” *Becerra*, 181 Wn.2d at 198 (quoting *Rutherford Food Corp.*, 331 U.S. 722, 730 (1947)).

There is no credible dispute that Respondent Baja Concrete employed the cement finishers, laborers, and carpenters working at Newway Forming’s three Seattle sites, 1120 Denny Way, 2014 Fairview Avenue, and 707 Terry Avenue. The evidence resulting from OLS’ investigation indicates that Respondents Newway Forming, Antonio Machado, and Roberto Soto Contreras also employed these cement finishers, laborers, and carpenters.

A. Baja Concrete and Newway Forming are tightly integrated.

A number of factors suggest a close, possibly exclusive relationship between Respondents Baja Concrete and Newway Forming.

As discussed above, Respondent Baja Concrete started working with Respondent Newway Forming in Washington within two months of its incorporation in Miami and before it registered in Washington State. Baja Concrete USA Corp appears not to have existed before Newway Forming conceived of a need for such an entity at its sites.

Notably, no written contract exists between the two companies, yet Respondent Baja Concrete routinely billed Respondent Newway Forming for labor provided by the workers on Baja Concrete's payroll. Those employees were dispatched to other sites where Newway Forming operated, again without the formality of a contract for each site where this occurred.

The timesheets from the 707 Terry Avenue and 2014 Fairview Avenue development projects reflect little-to-no organized involvement by Respondent Baja Concrete as a company at those locations; instead, Baja Concrete employees were simply deployed to sites where Respondent Newway Forming required additional labor, including a single day's work at 707 Terry Avenue.

The safety sign-in sheets where workers on Respondent Baja Concrete's payroll listed Respondent Newway Forming as their company are another factor suggestive of a close relationship between the two companies.

Finally, the check from Respondent Baja Concrete to Respondent Antonio Machado is noteworthy. It reflects an informal flow of money between Respondents, further establishing the integration of their business.

The extremely close business relationship between Respondents means that the cement finishers, laborers, and carpenters worked for all Respondents; that is, Respondent Newway Forming jointly employed these employees.

B. Newway Forming exercised comprehensive control of the workers

Respondent Newway Forming had significant control over the employees' days of work; hours of work; day-to-day tasks; and the timing, frequency, and duration of their meal and rest breaks. Additionally, the employees notified their Newway Forming foreman if they needed to leave the jobsite mid-shift due to illness, which reinforces that the employees were effectively part of Respondent Newway Forming's workforce supervised by its foremen. This near-total control over the work of the cement finishers, laborers, and carpenters establishes that Respondent Newway Forming was also an employer of these employees.

As noted above in Section II.A.iii, Respondent Newway Forming foremen who supervised the employees' day to day work also had the ability to discipline them. Additionally, employees testified that Respondent Newway Forming foremen and Respondent Antonio Machado had the ability to discipline them. An employee stated that, "Tony fired employees with Baja Concrete. I don't know their actual names but one we called Pumba and the other was Tyson. Tony told Roberto to fire them."

C. Employees worked at Newway Forming's worksites, and used Newway Forming equipment.

Respondent Newway Forming required employees paid through Respondent Baja Concrete to start their workdays at the Newway Forming office on-site to clock in using first its timesheets; once Respondent Newway Forming implemented a clock-in system for its employees, employees paid through Respondent Baja Concrete used Respondent Newway Forming's clock-in system to punch in and out. The employees' use of Respondent Newway Forming's premises and equipment in completing their work demonstrates that Newway Forming jointly employed the employees.

D. Newway Forming played a significant role in preparation of payroll and the payment of wages

Respondent Newway Forming verified all invoices for labor hours submitted by Respondent Baja Concrete against its own timeclock records. Accordingly, Respondent Newway Forming was fully aware of the hours worked by the employees, including significant overtime hours worked, and the pay for those employees. Respondent Newway Forming considered its timeclock entries as the definitive record of hours worked. Respondent Newway Forming's central role in pay and payroll processing gave it knowledge of and control over rates and amounts of pay for the employees, strongly supporting the conclusion that Respondent Newway Forming jointly employed the employees.

Respondent Newway Forming was aware that employees paid through Respondent Baja Concrete's payroll worked significant overtime, and it was aware that the employees alleged not receiving appropriate overtime pay. In tracking, verifying, and signing off on the employees' hours, Respondent Newway Forming had full visibility into the fact that the employees paid through Baja Concrete often worked significant overtime, sometimes working a total of between 120 and 150 hours in a two-week period, without Respondent Baja Concrete increasing the billing to reflect overtime pay. Additionally, several employees testified that they spoke to various Respondent Newway Forming foremen and to Respondent Antonio Machado about the fact that they were not paid for overtime. As one example, an employee stated that that "Newway [Forming] knew Baja [Concrete] was not paying us overtime. Even though they knew they said work it out with Roberto. We would go to Tony when he paid Roberto and he would just say talk to Roberto about your pay."

E. The employees' labor was critical to Newway Forming's business

Finishing of Respondent Newway Forming's concrete pours was an essential aspect of Newway Forming's deliverables on this project, explicitly named in its contract with Onni Contracting (Washington) Inc. As such, workers paid through Respondent Baja Concrete were necessary for Respondent Newway Forming to complete its work. Because Respondent Newway Forming could not complete its work without the labor of the workers, it jointly employed those workers.

F. Respondent Roberto Soto Contreras jointly employed the employees together with the other Respondents.

OLS finds that Respondent Roberto Soto Contreras jointly employed the employees due to his high degree of control over the workers' hiring, firing, and discipline; their pay and whether they

received the appropriate overtime premium; and their ability to use Paid Sick and Safe Time. Additionally, Respondent Roberto Soto Contreras took steps to further control the workers by arranging their housing and transportation, and retaining their personal identity documents.

OLS finds that Roberto Soto Contreras jointly employed the employees due to his high degree of control over their hiring and firing, discipline, rate of pay, overtime premium, and sick leave, and his control over their housing, transportation, and personal identifying documents.

G. Respondent Antonio Machado jointly employed the employees together with the other Respondents.

OLS finds that Respondent Antonio Machado jointly employed the employees due to his high degree of control over the workers' hours, schedules, and whether they worked overtime; his direct supervision of the Respondent Newway Forming foremen who supervised the employees' day-to-day work; his influence over discipline and termination of employees paid through Respondent Baja Concrete; and his direct supervision of Roberto Soto Contreras, who served as a pass-through Respondent for Antonio Machado's instructions rather than a genuine foreman for a separate company.

Based on all of the evidence reviewed with respect to the economic realities test, OLS finds that the preponderance of the evidence supports a finding of joint employment for Baja Concrete USA Corp., Roberto Soto Contreras, Newway Forming, Inc., and Antonio Machado in relation to the employees paid through Baja Concrete.

II. Violations

A. Non-payment of Overtime

SMC 14.20.020 states an employer shall pay all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals. SMC 14.20.010 defines 'compensation' as "payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required paid leave, and reimbursement for employer expenses." Additionally, RCW 49.46.130 (1) states, "except as otherwise provided in this section, no employer shall employ any of his or her employees for a workweek longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed."

Employees testified that they were paid for all hours worked but without the overtime premium, and Respondent-provided payroll documentation demonstrated that employees' pay did not account for an overtime premium when employees worked more than 40 hours in a work week. There were some instances starting in March 2020 until August 2020 where some employees were starting to receive overtime premium pay.

A preponderance of the evidence demonstrates that Respondents were in violation of SMC 14.20.020 by failing to pay overtime premium the vast majority of the time.

To calculate unpaid overtime premium for employees, OLS utilized payroll reports, paystubs, and bi-weekly timesheets from hours worked from the following Seattle work sites in 2018, 2019, and 2020: 1120 Denny Way, 2014 Fairview Avenue, and 707 Terry Avenue. All of that information was provided by the Respondents. Utilizing these timesheet records, OLS identified the weeks in which employees exceeded 40 hours of work to determine the number of overtime-eligible hours which had not been paid at time-and-a-half, as demonstrated by payroll records which did not list any overtime payment or rate. OLS multiplied each worker's overtime-eligible hours by .5 to determine the amount still owed and in instances where a workers' average hourly rate fell below the minimum wage and the employee qualified for overtime premium pay, we increased the hourly rate to the minimum wage in that year and multiplied it by .5 for all hours deemed overtime-eligible.

B. Minimum Wage

Under the Minimum Wage Ordinance, Schedule 1 employers have 500 or more employees, and under SHRR 90-045(5), "[t]he Schedule of the joint employer with the most employees determines the hourly rate for the employee who is jointly employed." Respondent Newway Forming employs more than 500 employees and therefore Respondents jointly are Schedule 1 employers. Schedule 1 employers are required to pay each employee an hourly minimum compensation of at least \$15.00 in 2018, \$16.00 in 2019, and \$16.39 in 2020. An hourly minimum wage means "the minimum wage due to an employee for each hour worked during a pay period." SMC 14.19.010.

Dividing the bi-weekly gross wages as shown in the payroll records by the total hours worked in that pay period as reflected by the timesheets resulted in less than the hourly minimum compensation required for 2019 in several instances.

A preponderance of the evidence demonstrates that Respondents violated the minimum wage provision of the Minimum Wage Ordinance, SMC 14.19.030.

To determine the remedy, OLS calculated the difference between what the employee received in payment and what they should have received at the higher minimum wage rate and assessed interest based on the length of time that these back wages have been overdue.

C. Non-payment of Hours worked

Under SMC 14.20.020, employers are required to pay all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals.

Additionally, in accordance with SMC 14.20.030(A) employers are required to keep records for a three-year period demonstrating that employees were paid for all of their work. A failure to maintain such records creates a presumption of a violation.

According to detailed timesheets from 1120 Denny Way, 707 Terry Avenue, and 2014 Fairview Avenue, some employees regularly performed work for extended time periods, but payment for these time periods was not reflected in payroll records provided by Baja Concrete. Respondents failed to provide payroll records demonstrating payment for these hours worked, even when OLS explicitly requested proof of payment for those hours. The failure to maintain records triggers the presumption of a violation. Furthermore, Respondents' failure to provide contact information for employees, even in response to a subpoena, inhibited OLS' ability to reach these employees for their testimony.

Respondents failed to rebut the presumption of a violation by clear and convincing evidence. A preponderance of the evidence supports that Respondents violated SMC 14.20.020 and 14.20.030 (A).

OLS calculated nonpayment of wages by multiplying the hours worked listed on the Baja Concrete's bi-weekly timesheets by an average hourly rate for that employee. Since employees' actual hourly compensation rates fluctuated, the rate was calculated by averaging all hourly rates paid to that worker throughout all pay periods. For instances where records were insufficient to calculate an average for that employee, we used an average of all employees' hourly rates.

D. Unauthorized Deductions

SMC 14.20.020 requires employers to pay "all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals."

RCW 49.52.060 permits employers to "withhold or divert any portion of an employee's wages when required or empowered so to do by state or federal law or when a deduction has been expressly authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of such employee."

Respondents did not provide copies of any written authorizations for deductions, even when explicitly requested. Employees testified that they never signed written authorizations allowing these paycheck deductions. The employees had no ability to withhold payment for rent, gas, tools, or other expenses if they thought the charges were unreasonable or in months where more employees were sharing in the same set costs, since the money was deducted directly from their paychecks without their written authorization.

Additionally, OLS finds it more likely than not that Respondent Baja Concrete derived a profit from the deductions for employees' housing costs, which further invalidates the deductions because under RCW 49.52.060, deductions for the benefit of employees are permitted with advance, written authorization of the employee "PROVIDED, That the employer derives no financial benefit from such deduction and the same is openly, clearly and in due course recorded in the employer's books." Based on the maximum number of people residing in each unit, the rental rates as of May 2021, and the fact that individual employees' deduction amounts were generally consistent regardless of fluctuation in the number of people residing at the apartment at various times, employees were overcharged for their housing. Because transportation costs varied so widely even when the number of employees transported and the total days worked in a

month stayed consistent, OLS finds it more likely than not that Baja Concrete also derived a profit from the gas deductions.

A preponderance of the evidence demonstrates that demonstrates that Respondents have violated the compensation provision of the Wage Theft Ordinance, SMC 14.20.

OLS calculated proposed remedies based on the total amount incorrectly withheld from each employee, including liquidated damages, and assessed interest based on the length of time elapsed since each deduction.

OLS excluded employees from the deductions remedies calculation if they did not appear on the Newway timesheets at any of the three Seattle locations. OLS was aware that Baja Concrete had employees on payroll who performed their work outside of OLS' jurisdiction, particularly in Bellevue at Bosa's 'One88' project. Accordingly, OLS concluded that employees on Baja Concrete's payroll who did not appear on the timesheets for Seattle sites had performed their work in Bellevue, and excluded those deductions from our remedy calculations.

E. Meal and Rest Breaks

SMC 14.20.020 requires employers to pay "all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals." "Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required paid leave, and reimbursement for employer expenses.

Under WAC 296-126-092(1), employees shall be allowed a meal period of at least thirty minutes which commences no less than two hours nor more than five hours from the beginning of the shift.

Under WAC 296-126-092(4), employees shall be allowed a rest period of not less than ten minutes, on the employer's time, for each four hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period. No employee shall be required to work more than three hours without a rest period.

Employees testified that the only meal and rest periods they received were a single 10-minute morning break and a single 30-minute meal break each workday. Shifts ranged from 5 to 19 hours, and often reached the point where employees were entitled to additional meal and rest breaks which they did not receive.

A preponderance of the evidence demonstrates that Respondent violated the compensation provision of the Wage Theft Ordinance.

The following information is how OLS determined the back wages, overtime premium and interest for the meal and rest breaks.

1. Back Wages

OLS calculated back wages based on the number and length of missed breaks, which varied depending on the length of the shift. A ten-minute rest period is required for each 4 hours of working time. A 30-minute meal period is required when an employee works more than five hours in a shift. Employees received one rest break and one meal break per shift. Thus, for a shift which was over 5 hours but less than 10 (requiring two rest breaks and one meal break), OLS assessed 10 minutes of back wages for one missed rest break. For shifts exceeding 10 hours but less than 12 (requiring two rest breaks and two meal breaks), OLS assessed 10 minutes of back wages for one missed rest break and 30 minutes of back wages for one missed meal break. For shifts that were 12 hours or longer, and 15 hours or less (requiring three rest breaks and two meal breaks), OLS assessed 20 minutes of back wages for two missed rest breaks and 30 minutes of back wages for one missed meal break. For shifts that were more than 15 and less than 16 hours (requiring three rest breaks and three meal breaks), OLS assessed 20 minutes of back wages for two missed rest breaks and 1 hour of back wages for two missed meal breaks. Finally, for shifts that were between 16 and 19.99 hours (requiring four rest breaks and three meal breaks), OLS assessed 30 minutes of back wages for three missed rest breaks, and 1 hour of back wages for two missed meal breaks. OLS totaled the missed breaks per worker, per year to calculate back wages.

2. Overtime Premium on Missed Break Back Wages

Missed breaks count as hours worked. OLS calculated the percentage of weeks within the year that each employee exceeded 40 hours worked in a week. OLS used that percentage to determine the portion of breaks back wages that should be paid at the overtime premium. For example, if we determined that an employee worked more than 40 hours per week 80% of the time, we calculated that 20% of the time represented by missed breaks was owed at the employee's average regular rate, and 80% of the time represented by missed breaks was owed at time-and-a-half. Whenever the employee worked more than 40 hours in a week and is owed for missed breaks, those breaks are owed at time and a half because they are in addition to the 40 hours and because the employees never received straight time pay which accounted for these breaks.

3. Interest

Rather than calculate interest based on each separate date for which employees were owed for missed breaks, OLS assessed interest for all missed break back wages assessed in a given calendar year utilizing an individualized midpoint within the year for each employee. The midpoint is calculated based on the first date and last date when the employee appeared in that year's timesheets. The midpoint represents an estimated average date from which the missed break wages were due to the employee. Interest is based on the time elapsed since the midpoint, at a rate of 1% per month up until to the date of determination.

F. Paid Sick and Safe Time – Policy, Accrual, Notifications, and Use

1. Notice of Rights/Poster

Under 14.16.045(B), "[e]mployers shall display the poster in a conspicuous and accessible location where any of their employees work. Employers shall display the poster in English and in the primary language(s) of the employee(s) at the particular workplace. If display of the poster is

not feasible, including situations when the employee works remotely or does not have a regular workplace, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.”

Respondent Baja Concrete failed to provide the requested proof that it displays the poster as required by SMC 14.16.045(B). A preponderance of the evidence demonstrates that Respondents violated the compensation provision of the Paid Sick and Safe Time Ordinance, SMC 14.16.045.

2. Policy

Employers must have a PSST policy that complies with the requirements of the PSST Ordinance and provide the policy to all employees in writing. SMC 14.16.045(C).

Respondents failed to produce a PSST policy which covered employees paid through Respondent Baja Concrete, and did not provide employees with a written copy of a PSST policy. A preponderance of the evidence demonstrates that Respondents violated the compensation provision of the Paid Sick and Safe Time Ordinance, SMC 14.16.045.

3. Accrual

Under the PSST Ordinance, Tier 3 employers employ more than 250 full-time equivalent employees on average, per calendar week, in the preceding calendar year. SMC 14.16.010. Respondents collectively employed over 500 full-time equivalent employees at all times between February 2018 and August of 2020. Therefore, Respondents collectively were a Tier 3 employer of workers paid through Baja Concrete.

Employees of Tier 3 employers must accrue one hour of PSST per every 30 hours worked. SMC 14.16.025(B)(2). Employees testified that they did not receive PSST accrual, and paystubs did not reflect accrual within the pay period or PSST balances. Respondents provided no credible evidence to demonstrate they were allowing employees to accrue PSST prior to March of 2020.

Additionally, a ‘pre-paid’ system which provides up-front cash payment in lieu of accrued hours, such as that which Respondents purport to offer, is not compliant with the accrual provisions of the PSST ordinance, SMC 14.16.025.

A preponderance of the evidence demonstrates that Respondents violated the compensation provision of the Paid Sick and Safe Time Ordinance, SMC 14.16.025.

4. Notification

Employers must provide employees a written notification, each time wages are paid, with updated amounts of PSST hours accrued and reduced since the last notification, and the balance available for employees to use. SMC 14.16.030(K).

These notifications never appeared on paystubs prior to March of 2020, and Respondents did not provide evidence that they provided written notifications in any other format prior to March of 2020.

A preponderance of the evidence demonstrates that Respondents violated the compensation provision of the Paid Sick and Safe Time Ordinance, SMC 14.16.030.

5. Use

Upon an employee's request, employers must allow employees to use their available, accrued PSST for covered reasons listed in SMC 14.16.030(A)(1), including "an absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care; and, to allow the employee to provide care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care," or for the covered reasons under the ordinance's Safe Time provisions described in SMC 14.16.030(A)(2).

Employee testimony was consistent that workers were not able to access PSST to cover shifts they missed due to personal illness, injury, or other covered reasons.

OLS reviewed all payroll records provided by Respondent Baja Concrete for the period from February 2018 to August 2020, and identified only one shift to which a single worker applied PSST within that time frame, during the pay period beginning August 8, 2020. A pre-paid PSST system such as that which Respondents purport to offer, fails to permit employees to utilize accrued PSST hours upon request for covered reasons.

In the subpoena duces tecum issued on July 16, 2020, OLS required production of all records relating to Respondents' employees' use of Paid Sick time from the period of January 12, 2017 to date of production. The Respondents failed to provide any records demonstrating that employees had successfully used PSST, except for the single instance of use by one worker in the pay period beginning August 8, 2020.

A preponderance of the evidence demonstrates that Respondents violated the use provisions of the PSST ordinance, SMC 14.16.030.

6. Calculations

When employers violate PSST accrual requirements and/or preclude workers from using PSST, both of which apply here, OLS calculates back pay for 30 PSST hours for each year of noncompliance for up to three (3) years preceding the initiation of the investigation through the date of the Determination and Order or Pre-Determination Settlement, paid at the employee's rate of pay on the last day of each year of noncompliance, plus interest. For employees working fewer than 2080 hours per year, the number of hours to be paid out will be prorated based on hours worked.⁵

⁵ Chapter 140 A.2 Remedies in Paid Sick and Safe Time Cases

OLS has calculated remedies based on the total hours worked by covered workers in each year, up to the cap of 30 PSST hours for each year of noncompliance. Because of the workers' variable hourly compensation, OLS used average hourly rate pay for each worker in each year.

G. OLS Workplace Poster

Per SMC 14.16.045(B); SMC 14.19.045(B); SMC 14.20.025(B), "Employers shall display the OLS poster in a conspicuous and accessible location where any of their employees work, in English and in the primary language of the employees at the particular workplace."

Respondents stated that they display an OLS poster in a mobile vehicle. However, Respondents did not provide any photo actually showing a posted OLS poster, as requested. Additionally, employees stated they never saw an OLS poster located at any worksite location.

A preponderance of the evidence demonstrates that Respondents violated the notice and posting provision of the Ordinances.

H. Record Retention

Under the SMC 14.16.050, SMC 14.19.050, and SMC 14.20.030, for a three-year period after an employee works the hours, employers shall retain payroll records documenting each employee's:

1. Name;
2. Address;
3. Occupation;
4. Dates of employment;
5. Rate(s) of pay;
6. Amount of pay each pay period;
7. Hours worked;
8. Time of day and day of week that each employee's workweek begins;
9. Hours worked each day and work week;
10. Total daily or weekly earnings;
11. Total overtime earnings;
12. Date of payments;
13. Dates the pay period covered;
14. Total payment for each pay period;
15. Deductions, additions, and a record of each; and
16. Paid sick and safe time used by covered employees.

Respondents failed to provide records of all employee's names and address, total overtime earnings, and dates of employment. In addition to requesting this information through a written request for information, OLS requested this information in a subpoena duces tecum on July 16, 2020. OLS did not receive the requested information.

A preponderance of the evidence demonstrates that Respondents violated the record retention provision of the Paid Sick and Safe Time Ordinance, SMC 14.16.050; the Minimum Wage Ordinance, SMC 14.19.050; the Wage Theft Ordinance, SMC 14.20.030.

I. Notice of Employment Information

Under the Wage Theft Ordinance, employers shall provide written notice, in English and each employee's primary language at the time of hire and before any change to such employment information, or as soon as practicable for retroactive changes to such employment information. As of April 1, 2016, employers must also provide this information to all existing employees. The notice must contain the following information:

1. Name of employer and any trade (doing business as) names used by the employer;
2. Physical address of the employer's main office or principal place of business and, if different, a mailing address;
3. Telephone number and email of the employer;
4. Employee's rate or rates of pay and eligibility to earn overtime rate(s) of pay;
5. Pay basis (e.g. hour, shift, day, week, commission);
6. Employee's established pay day for compensation.⁶

Respondent failed to provide written notices of employment information as required by SMC 14.20.025 (D). OLS requested this information in a subpoena duces tecum July 16, 2020 and did not receive the requested information.

A preponderance of the evidence demonstrates that Respondents violated the notice of employment information provision of the Wage Theft Ordinance, SMC 14.20.025.

J. Wage Payment Notification

Under the Wage Theft Ordinance, each time wages are paid, employers shall provide written notice that contains the following information:

1. All hours worked, showing regular and overtime hours separately;
2. Rate(s) of pay;
3. Pay basis;
4. Gross wages; and
5. All deductions for the pay period.

SMC 14.20.025(E). Respondents failed to list any hours worked on most payroll records, and additionally did not separately list any overtime hours worked on pay stubs between February of 2018 and March of 2020.

By listing "piece-rate" pay but failing to list the number of units completed, Respondents did not comply with the requirement to provide rate of pay. Respondents provided only the total gross pay without indicate the rate of pay from which it was derived.

⁶ SMC 14.20.025(D).

Additionally, Respondents did not supply evidence that workers received pay based on the number of units, or pieces, they complete, rather than on the number of hours they work. Employees received pay based on bi-weekly fluctuating hourly rates. By claiming to pay on piece rate when in reality they were paying people by the hour, they did not comply with the requirement to provide pay basis.

A preponderance of the evidence demonstrates that Respondents violated the wage payment notification provision of the Wage Theft Ordinance, SMC 14.20.025.

III. Remedies

A. Back Wages, Interest, and Liquidated Damages Payable to Workers

OLS finds that each of the employees set forth in Attachment B is owed pay based on hours worked from February 2018 and August of 2020. The total amount of back wages and interest due to these employees is \$792,626.91. This amount includes \$631,288.54 in back wages plus 12% annual interest, calculated monthly.

Under the Wage Theft, Minimum Wage, and Paid Sick and Safe Time Ordinances, OLS may assess liquidated damages in an additional amount of up to twice the unpaid compensation. SMC 14.16.080.B; SMC 14.19.080.B; SMC 14.20.060.B. In this case, OLS assesses \$1,262,577.19 in liquidated damages.

The financial remedies due to employees are listed in Attachment B.

B. Civil Penalty for First Violation and Willful Interference Payable to the City of Seattle

Under the Wage Theft Ordinance, OLS may assess a civil penalty of up to \$556.30 per aggrieved party for a first violation; SMC 14.20.060.F. In this case, OLS assesses \$556.30 for each of the 53 aggrieved parties for a first violation of the Ordinance for a total civil penalty of \$29,483.90.

Under the Minimum Wage Ordinance, OLS may assess a civil penalty of up to \$556.30 per aggrieved party for a first violation; SMC 14.19.080.F. In this case, OLS assesses \$556.30 for each of the five aggrieved parties for a first violation of the Ordinance for a total civil penalty of \$2,781.50.

Under the Paid Sick and Safe Time Ordinance, OLS may assess a civil penalty of up to \$556.30 per aggrieved party for a first violation; SMC 14.16.080.F. In this case, OLS assesses \$556.30 for each of the 38 aggrieved parties for a first violation of the Ordinance for a total civil penalty of \$21,139.40.

Per SMC 14.20.060(E), a respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 14.20 shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000. A

representative from the Respondents did not provide an accurate assessment of hours worked until OLS subpoenaed the information. Additionally, Respondent did not provide OLS with the requested contact information for employees preventing the City's ability to interview more witnesses. Lastly, the Respondents created unreasonable delays in providing various requests for information. In this case, OLS assesses \$5,565.10 for willful interference, reflecting the maximum amount adjusted for inflation⁷.

C. Fines Payable to the City of Seattle

The Director assesses fines totaling \$117,381.40 (\$22,808.30 under the Paid Sick and Safe Time Ordinance and \$94,573.10 under the Wage Theft Ordinance), as outlined below:

- Under the Paid Sick and Safe Time Ordinance the Director assesses fines of \$556.30 for a violation of the notice of rights/workplace poster; \$556.30 for 38 aggrieved parties for failing to maintain records (\$21,139.40); \$556.30 for a violation of the notification of balance; and \$556.30 for a violation of the written PSST policy.
- Under the Wage Theft Ordinance, the Director assesses fines of \$556.30 per affected employee for failing to provide notice of employment information; \$556.30 for 53 aggrieved parties for failing to maintain records (\$29,483.90); \$556.30 for violation of the notice of rights/workplace poster; and \$556.30 for 53 aggrieved parties for a violation of the notice of payday information (\$29,483.90).

FINAL DIRECTOR'S ORDER

The Director orders the following remedies.

I. GENERAL TERMS

- 1. Complete Compliance.** Respondents shall comply with all provisions of the Ordinances with regard to all employees whom they employ directly or employ jointly with any entity.
- 2. Employee Contact Information.** Within 10 days of the execution of this Agreement by the Director, Respondents shall provide OLS the most current contact information Respondents have on file for all individuals receiving monetary compensation under this Agreement, including phone, email, mailing address, the employee's status as a current or former employee, and gross and net amount paid pursuant to this Agreement. For former employees only, Respondents shall also provide the last four digits of the employee's Social Security number. Respondents shall provide all the information electronically in Excel format using the template included as Attachment C, which shall be e-mailed to Respondents at mkimball@mdklaw.com, alarkin@mdklaw.com, Wandler@OLES.com, and jrconcrete99@gmail.com when this Determination and

⁷ <http://clerk.seattle.gov/search/clerk-files/321803>

Director's Order has been served on Respondents. Respondents shall not provide the information in any other format.

3. **No Retaliation.** There shall be no discrimination or retaliation of any kind against any person because of opposition to any practice prohibited under SMC 14.16, 14.19, or 14.20, or because of the filing of a charge or notice of investigation, giving of testimony or assistance, or participation in any manner in any investigation, proceeding or hearing thereunder. Respondents shall distribute copies of this Order, including this prohibition on discrimination and retaliation, to each of Respondent's management employees.
4. **Remedies if Respondents Fails to Comply.** In the event Respondents fails to promptly comply with any term of this Order, the Director may take appropriate steps to secure compliance.
5. **Public Disclosure.** This Order can be disclosed to the public, in accordance with RCW 42.56.070.

II. FINANCIAL REMEDIES

6. **Complete Financial Remedy.** Respondents shall pay \$2,055,204.10 to 53 affected workers and \$170,786.20 to the City of Seattle, for a complete financial remedy of \$2,225,990.30 Total financial remedies payable to workers overall, total financial remedies payable to the City of Seattle, and an itemization of civil penalties and/or fines are included in Attachment A. Totals due to individual workers for the purposes of making payments pursuant to Paragraph 7 are itemized in Attachment B.
7. **Methods for Respondents to Make Payments Due to Current and/or Former Employees.** With respect to payments owed to current and/or former employees under this Order, Respondents shall distribute monies owed within 10 days of the OLS Director's execution of this Order in the manner set forth below:
 - a. **Payment for Former and Current Employees.** Respondents shall distribute monies owed to former employees under this Order by remitting a single check to OLS payable to the City of Seattle for the total amount of remedies owed to all former employees. If Respondent sends the check using a method that requires signature upon receipt, Respondents shall communicate their estimated delivery date to OLS at least three business days in advance. OLS will arrange for the distribution of checks to former employees.
 - b. **Unclaimed Checks.** After attempting to distribute checks to former employees for one year, these funds will be held for further distribution either by check to the missing employee or by escheatment to the State of Washington.

IV. COMPLIANCE MONITORING REQUIREMENTS

9. Access to places of business. For a period of seven years following the entry of this Order by the Director, Respondents shall provide OLS access to Respondent's place(s) of business, records necessary to establish compliance with the Ordinance(s) and this Order, and contact information for employees upon request. Respondents shall submit records to OLS within 10 days of a request for records under this Paragraph.

10. Full Compliance. For a period of seven years following the execution of this Agreement by the Director, Respondents shall ensure its compliance with the following items in regards to all Seattle employees whom they directly or jointly employ:

a. Record Retention. Respondents shall maintain the following payroll records for each employee whom they directly or jointly employ, consistent with the requirements of the Ordinances:

- i. Name;
- ii. Address;
- iii. Position title;
- iv. Dates of employment;
- v. Rate(s) of pay;
- vi. Amount of pay each pay period;
- vii. Hours worked;
- viii. Time of day and day of week that each employee's workweek begins;
- ix. Hours worked each day and work week;
- x. Total daily or weekly earnings;
- xi. Total overtime earnings;
- xii. Date of payments;
- xiii. Dates the pay period covered;
- xiv. Total payment for each pay period;
- xv. Paid sick and safe time used;
- xvi. Deductions, additions, and a record of each.

b. Notice of Employment Information. Within 10 days of the execution of this Order by the Director, Respondents shall provide notices of employment information to all Seattle employees whom they directly or jointly employ, and continue to do so pursuant to the requirements of the Wage Theft Ordinance. Respondents may use the template available on OLS' website at: <http://www.seattle.gov/laborstandards/resources-and-language-access/resources/templates>. The notice shall include:

- i. Name of employer and any trade ("doing business as") names used by the employer;
- ii. Physical address of the employer's main office or principal place of business and, if different, a mailing address;
- iii. Telephone number and email of the employer;
- iv. Employee's rate or rates of pay and eligibility to earn overtime rate(s) of pay;
- v. Pay basis (e.g. hour, shift, day, week, commission, piece rate); and

- vi. Employee's established pay day for compensation.
- c. **Wage Payment Notification.** Within 10 days of the execution of this Order by the Director, Respondents shall provide wage payment notification to all Seattle employees whom they directly or jointly employ, and continue to do so pursuant to the requirements of the Wage Theft Ordinance. The notice shall include:
 - i. All hours worked, showing regular and overtime hours separately;
 - ii. All rate or rates of pay whether paid on hourly, salary, commission, piece rate or combination thereof, or other basis during the pay period. Workers paid on rate other than hourly or salary are entitled to a detailed printed accounting of commissions, piece rate or other methods of payment earned during the pay period;
 - iii. Pay basis;
 - iv. Gross wages; and
 - v. All deductions for the pay period.
- d. **Paid Sick and Safe Time Notifications.** Within 10 days of the execution of this Order by the Director, and on an ongoing basis, Respondents shall notify employees in writing each time wages are paid of total PSST accrued, amount of available PSST hours, and amount of PSST used since the last notification.
- e. **Paid Sick and Safe Time Accrual and Use.** Within 10 days of the execution of this Order by the Director, and on an ongoing basis, Respondents shall provide all Seattle employees whom they directly or jointly employ access to their accrued hours of paid sick and safe time for all covered purposes under SMC 14.16.030.A and 14.16.030.B.
- f. **Poster.** Within 30 days of the execution of this agreement, Respondents shall post the current OLS Workplace Poster at each location where Seattle employees for whom they directly or jointly employ work. The poster shall be posted in a location that is conspicuous and accessible to all employees at that location, in English and any other primary languages spoken by employees. The 2021 OLS Workplace Poster is included as Attachment D.
- g. **Tracking Employee Hours Worked.** Within 30 days of the execution of this agreement, Respondents shall implement a time tracking system so that all hours worked by all Seattle employees whom they directly or jointly employ are tracked and paid. The system must have the following characteristics:
 - i. Employees clock in at the start of the workday and clock out at the end of the workday;
 - ii. Employees may clock out for lunch if they are completely relieved of duties for at least 30 minutes;
 - iii. Employees never clock out for rest breaks;
 - iv. The system records who enters each piece of data, and this information cannot be removed or edited, and is easily accessible;

- v. If edits are made to data in the system, all changes are automatically flagged or coded so edits are apparent, and there is no way to remove that flag or coding, and a history of the edits is retained and easily accessible; and
 - vi. Employees can easily verify their information at any time they are at work, and are provided time reports for the current and prior pay period upon request.
- h. Payroll Services.** Within 30 days of the execution of this agreement, Respondents shall ensure a professional service provides payroll for all employees which Respondents directly or jointly employ. The payroll service must comply with the following requirements:
- i. The payroll provider must have and follow a code of ethics;
 - ii. Respondents' subcontractors shall transmit the data from their time tracking system to the payroll provider, who will cause the employees to be paid for all hours worked by either check or electronic funds transfer, whichever method the employee requests;
 - iii. The payroll provider must provide paystubs that comply with all applicable requirements of the Ordinances;
 - iv. Paystubs must be printed or available on a computer webpage, and may not be handwritten;
 - v. The payroll provider must maintain payroll records in compliance with the requirements of the Ordinances; and
 - 1. The payroll provider must provide Respondents' subcontractor's information and documents to OLS upon request.

11. Document production. For a period of seven years following the entry of this Order, Respondents shall produce records according to the following schedule, method, and list:

- a. Document production – Schedule of production.** Respondents shall submit the documents set forth in Paragraph 11(c) to OLS twice a year for the specified term or until Respondents no longer do business, whichever is first.
 - i. The documents must be submitted by the following dates:
 - 1. Between February 2 and February 28, 2022;
 - 2. Between August 1 and August 31, 2022;
 - 3. Between February 2 and February 28, 2023;
 - 4. Between August 1 and August 31, 2023;
 - 5. Between February 2 and February 28, 2024;
 - 6. Between August 1 and August 31, 2024;
 - 7. Between February 2 and February 28, 2025;
 - 8. Between August 1 and August 31, 2025;
 - 9. Between February 2 and February 28, 2026;
 - 10. Between August 1 and August 31, 2026;
 - 11. Between February 2 and February 28, 2027;

12. Between August 1 and August 31, 2027;
13. Between February 2 and February 28, 2028; and
14. Between August 1 and August 21, 2028.

b. Document production – Method of Production. Respondents shall submit records in electronic format to daron.williams@seattle.gov and ashley.harrison@seattle.gov.

c. Document production – List of items. Pursuant to the schedule described in Paragraph 11(a), documents to be produced shall include the following items. The documents shall cover the time period between the Director’s execution of this Agreement and the first date of submission pursuant to this Paragraph 14, or otherwise between last date of submission and the subsequent date of submission pursuant to this Paragraph 14 (referred to as “time period” for purposes of this Paragraph 11(c)).

- i. An employee roster with personal phone numbers for each employees directly or jointly employed by Respondents who performed work during the time period;
- ii. For all employees directly or jointly employed by Respondents who have performed work in Seattle during the time period, a payroll summary consisting of the following items:
 1. Full name of employee;
 2. Pay dates;
 3. Total straight-time hours worked per pay period;
 4. Total overtime hours worked per pay period;
 5. Hourly rate(s) of pay;
 6. Gross wages per pay period;
 7. Deductions for the pay period;
 8. Copies of all Notices of Employment Information distributed to employees in the preceding six months;
- iii. For all employees directly or jointly employed by Respondents who have performed work in Seattle during the time period, a summary of PSST balances and PSST use by pay period, and copies of the most recent PSST balance notifications provided to employees;
- iv. For all new employees directly or jointly employed by Respondents and employees of Respondents who have had a change in employment, copies of notices of employment information provided to each employee.

d. Failure to produce documents. Failure to provide these records set forth in Paragraph 11(c) within 30 days of their due date pursuant to the schedule set forth in Paragraph 11(a) will result in a full investigation for any and all violations of Seattle’s labor standards.

e. Additional Document Requests. For a period of seven years following the execution of this Agreement by the Director, Respondents shall produce

additional documents requested by OLS within 10 days of receiving such requests.

V. POLICY & PRACTICE REQUIREMENTS

12. Paid Sick and Safe Time Policy. Within 30 days of the execution of this Order by the Director, Respondents shall develop and implement a written policy to comply with the PSST Ordinance, and provide it to all Seattle employees whom they directly or jointly employ. OLS invites Respondents to utilize OLS' Sample PSST Model Policy, available online at <http://www.seattle.gov/laborstandards/resources-and-language-access/resources/templates>, as well as OLS' PSST Policy Check List, available online at <http://www.seattle.gov/laborstandards/resources-and-language-access/resources/fact-sheets-and-guides>. OLS also invites Respondents to contact an OLS Engagement Specialist at business.laborstandards@seattle.gov for technical assistance.

13. Meal and Rest Breaks Policy. Within 30 days of the execution of this Order by the Director, Respondents shall develop and implement a written policy to comply with the Wage Theft Ordinance regarding to employee meal and rest breaks, and provide it to all Seattle employees whom they directly or jointly employ. OLS invites Respondents to utilize OLS's Fact Sheet on the Wage Theft Ordinance: Meal and Rest Breaks, available online at http://www.seattle.gov/Documents/Departments/LaborStandards/21_0405_WTO_MealRestBreak.pdf. OLS also invites Respondents to contact an OLS Engagement Specialist at business.laborstandards@seattle.gov for technical assistance.

VI. PROOF OF COMPLIANCE

14. Initial Proof of Compliance. Within 30 days of the execution of this Order by the Director, Respondents shall provide written documentation to OLS Investigators Daron Williams and Ashley Harrison to show that its practices comply with the Ordinances, including proof that Respondent complied with the above Paragraphs. Specifically, Respondents shall submit:

- a. A photograph of the OLS Workplace Poster, as posted at each location;
- b. A written copy of the policies required by Paragraphs 12 and 13.

RIGHT TO APPEAL

Respondents have 15 days from being served this Director's Order to appeal the remedies issued by making a written request for a contested hearing before the Seattle Hearing Examiner.⁸ If Respondents fails to file such appeal, the Director's Order will be final and enforceable. Interest

⁸ For more information about the appeal process, complainants may call the Office of Hearing Examiner at (206) 684-0521 or review its Rules of Practices and Procedure at www.seattle.gov/hearing-examiner. Due to the COVID-19 pandemic, the Hearing Examiner is operating with temporary rule changes: <http://www.seattle.gov/Documents/Departments/HearingExaminer/CODV19%20HXE%20Factsheets/Emergency%20Order%203-16-2020.pdf>.

will continue to accrue on the amounts Ordered at a rate of 12 percent per annum, calculated monthly.

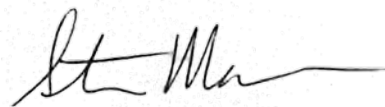
If, within 10 days of receiving this Order, Respondents pay the remedy due to employees and any former employees, which totals \$2,055,204.10, the Director will waive the total civil penalties and fines due to the City of Seattle, which totals \$170,786.20. If, within 15 days of receiving this Order, Respondents pay the remedy due to employees and any former employees, the Director will waive half the amount of civil penalties and fines due to City of Seattle, bringing the total civil penalties and fines due to the City of Seattle to \$85,393.10.

If Respondents fails to pay the full remedy of \$2,225,990.30 defined in this Director's Order within 30 days of receiving the Order, OLS will pursue recovery of the listed amounts, plus attorney's fees and costs through any means available.

Please contact Daron Williams, Investigator, at 206-733-9969 or Ashley Harrison, Investigator, at 206-386-1930 with any questions.

8/25/21

Date



Steven Marchese
Director
Office of Labor Standards

Attachment A – Total Financial Remedies to Workers and City of Seattle

Table 1. Remedies Payable to Workers (& Number of Workers Receiving Remedies)							
Ordinance	Back Wages	Interest	Liquidated Damages	Civil Penalties	Fines	Ordinance Total	Number of Workers Receiving Remedies (Under Ordinance)
Paid Sick and Safe Time	\$22,152.01	\$3,358.93	\$44,304.02			\$69,814.96	38
Wage Theft	\$603,537.35	\$156,721.86	\$1,207,074.81			\$1,967,334.02	53
Minimum Wage	\$5,599.18	\$1,257.58	\$11,198.36			\$18,055.12	5
Total	\$631,288.54	\$161,338.37	\$1,262,577.19			\$2,055,204.10	

Total number of unique individuals receiving financial remedies under all Ordinances: ____53____

Table 2. Remedies Payable to the City of Seattle			
Ordinance	Civil Penalties	Fines	Total
Paid Sick and Safe Time	\$21,139.40	\$22,808.30	\$43,947.70
Wage Theft	\$29,483.90	\$94,573.10	\$124,057.00
Minimum Wage	\$2,781.50		\$2,781.50
Total	\$53,404.80	\$117,381.40	\$170,786.20

Table 3. Civil Penalties & Fines (Itemization of Civil Penalty & Fine Totals Listed in Tables 1-2)			
IMPORTANT NOTE: Amounts listed in this table are included in the Civil Penalty/Fine totals listed in Tables 1-2 above and are itemized here for informational purposes only. They are not additional amounts to be paid.			
Civil Penalty or Fine <i>(Applicable Ord. Listed in Parenthesis)</i>	Amount Per Aggrieved Party/Record <i>(Only If Applicable)</i>	Number of Aggrieved Parties/Records <i>(Insert "1" if penalty or fine is not per person/record)</i>	Total
Civil Penalty for Violation (PSST)	\$556.30	38	\$21,139.40

Table 3. Civil Penalties & Fines (Itemization of Civil Penalty & Fine Totals Listed in Tables 1-2)

IMPORTANT NOTE: Amounts listed in this table are included in the Civil Penalty/Fine totals listed in Tables 1-2 above and are itemized here for informational purposes only. They are not additional amounts to be paid.

Civil Penalty or Fine <i>(Applicable Ord. Listed in Parenthesis)</i>	Amount Per Aggrieved Party/Record <i>(Only If Applicable)</i>	Number of Aggrieved Parties/Records <i>(Insert "1" if penalty or fine is not per person/record)</i>	Total
Civil Penalty for Violation (Wage Theft)	\$556.30	53	\$29,483.90
Civil Penalty for Violation (Minimum Wage)	\$556.30	5	\$2,781.50
Civil Penalty for Willful Interference (Wage Theft Ordinance)	\$5,565.10	1	\$5,565.10
Fine for Failure to Maintain Records (Wage Theft Ordinance)	\$556.30	53	\$29,483.90
Fine for Failure to Provide Written Notice of Employment Information (Wage Theft)	\$556.30	53	\$29,383.90
Fine for Failure to Provide Written Notice of Pay Information (Wage Theft)	\$556.30	53	\$29,483.90
Fine for Failure to Provide Notification of PSST Balance (PSST)	\$556.30	1	\$556.30
Fine for Failure to Provide Notice of PSST Policy/Procedure (PSST)	\$556.30	1	\$556.30
Fine for Failure to maintain records (PSST)	\$556.30	38	\$21,139.40
Fine for Failure to Provide Notice of Rights (PSST)	\$556.30	1	556.30
Total			\$170,786.20



Attachment B – Financial Remedies

Pursuant to Paragraph 7, Respondents shall distribute monies owed to former employees under this Agreement (listed in the table below) by remitting a single check payable to the City of Seattle for the total amount of remedies owed to all former employees, less appropriate and lawful tax withholdings, to Office of Labor Standards, 810 3rd Avenue, Suite 375, Seattle, WA 98104, Attn: Vanessa Haralson.

NAME	LIQUIDATED DAMAGES	INTEREST	BACK WAGES	TOTAL
Alberto Pimental	\$62,447.16	\$10,707.75	\$31,223.58	\$104,378.48
Alejandro Fiol	\$16,632.73	\$2,471.70	\$8,316.36	\$27,420.79
Alfredo	\$6,761.95	\$743.82	\$3,380.98	\$10,886.74
Angel M. Gomez Chavez	\$14,493.16	\$1,790.86	\$7,246.58	\$23,530.60
Claudio Gamboa	\$56,605.53	\$7,207.42	\$28,302.77	\$92,115.73
Cristhian Pelaez Ruiz	\$37,797.07	\$4,226.61	\$18,898.53	\$60,922.22
Cristian Navejas	\$115,106.98	\$19,108.01	\$57,553.48	\$191,768.47
David Giron	\$20,193.37	\$3,243.61	\$10,096.68	\$33,533.66
Diego F. Rojas Villaseca	\$499.00	\$40.24	\$249.50	\$788.74
Edgar Ramirez Arceo	\$600.00	\$30.00	\$300.00	\$930.00
Emeterio Collins Lopez	\$5,489.85	\$540.08	\$2,744.92	\$8,774.85
Fabian Asuna	\$3,847.09	\$384.71	\$1,923.55	\$6,155.34
Fernando	\$68,250.83	\$7,584.82	\$34,125.42	\$109,961.07
Gabriel Rios Ortiz	\$5,823.89	\$362.08	\$2,911.94	\$9,097.91
Gerardo Guzman Barragan	\$7,933.92	\$600.39	\$3,966.96	\$12,501.27
Gerardo Valencia	\$60,615.25	\$6,424.58	\$30,307.63	\$97,347.46
Hector A Cespedes Rivera	\$31,892.66	\$3,677.12	\$15,946.33	\$51,516.11
Israel Avila Gasca	\$13,358.11	\$1,716.89	\$6,679.05	\$21,754.05
Ivan A. Ponce	\$16,396.06	\$2,128.25	\$8,198.03	\$26,722.34
Javier A. Alfaro Perez	\$2,056.98	\$134.58	\$1,028.49	\$3,220.05
Javier Pinto	\$38,277.30	\$2,701.02	\$19,138.65	\$60,116.97
Jesus Ramon Castro Mendoza	\$6,497.36	\$600.24	\$3,248.68	\$10,346.27
John E. Hinestroz Diaz	\$11,128.13	\$1,698.29	\$5,564.06	\$18,390.48
Jose A. Estrada Parra	\$35,632.99	\$3,667.67	\$17,816.49	\$57,117.15
Jose Acosta Caballero	\$16,092.94	\$1,425.76	\$8,046.46	\$25,565.17
Jose Alvarez Rodriguez	\$2,680.49	\$168.14	\$1,340.25	\$4,188.88
Jose Vega Hernandez	\$29,030.49	\$3,324.94	\$14,515.25	\$46,870.68

Jose Rodriguez	\$3,415.99	\$443.81	\$1,707.99	\$5,567.79
Josseth Santos	\$1,643.32	\$91.20	\$821.66	\$2,556.17
Josue F. Osuna Tallabas	\$4,973.04	\$442.12	\$2,486.52	\$7,901.68
Julio Caballero Pacheco	\$3,544.36	\$233.84	\$1,772.18	\$5,550.38
Lucas M. Ayala	\$111,085.73	\$13,498.00	\$55,542.87	\$180,126.60
Luis A Garcia	\$2,799.14	\$368.95	\$1,399.57	\$4,567.65
Luis Andres Arriagada Aguilera	\$10,710.93	\$1,017.55	\$5,355.47	\$17,083.95
Luis Enrique	\$5,370.17	\$724.97	\$2,685.09	\$8,780.22
Luis Fernandez Rosas	\$15,836.40	\$2,052.36	\$7,918.20	\$25,806.95
Luis Ruelos	\$4,122.82	\$512.72	\$2,061.41	\$6,696.95
Manuel Camus Valdes	\$31,702.43	\$3,388.68	\$15,851.21	\$50,942.33
Marco Alvarez	\$24,720.86	\$1,965.69	\$12,360.43	\$39,046.98
Marco Villasenor Harbolte	\$11,949.67	\$1,188.13	\$5,974.83	\$19,112.63
Marco Santos	\$1,789.94	\$100.00	\$894.97	\$2,784.90
Marcos Yevenes	\$1,299.87	\$97.30	\$649.94	\$2,047.10
Matias Catalan Toro	\$8,153.67	\$952.84	\$4,076.83	\$13,183.34
Matias Rodriguez	\$29,412.17	\$4,501.17	\$14,706.09	\$48,619.43
Miguel Alfaro Pinto	\$5,193.11	\$355.43	\$2,596.56	\$8,145.10
Miguel Mendo	\$34,675.40	\$3,188.07	\$17,337.70	\$55,201.18
Noe Rios Estrada	\$172,737.91	\$29,998.28	\$86,368.96	\$289,105.15
Patricio Fernandez Borquez	\$31,409.15	\$3,348.86	\$15,704.58	\$50,462.60
Ramon A Duenas Gomez	\$8,976.92	\$1,202.68	\$4,488.46	\$14,668.06
Raul Benjamin Hiraes Cuevas	\$9,444.92	\$811.46	\$4,722.46	\$14,978.84
Roberto Hiralez Colin	\$28,517.79	\$2,698.74	\$14,258.89	\$45,475.41
Roberto Lopez Hernandez	\$2,297.71	\$148.44	\$1,148.85	\$3,595.00
Ruben Gonzalez	\$10,652.47	\$1,297.53	\$5,326.24	\$17,276.24
GRAND TOTAL	\$1,262,577.19	\$161,338.37	\$631,288.54	\$2,055,204.10

Attachment C - Former Employee Contact Information

[illegible]

Attachment C - Former Employee Contact Information

[illegible]

2021 Seattle Labor Standards Ordinances

The mission of the Office of Labor Standards is to advance labor standards through thoughtful community and business engagement, strategic enforcement and innovative policy development, with a commitment to race and social justice.



This poster must be displayed in a noticeable area at the workplace, in English and the language(s) spoken by employees.

The Office of Labor Standards provides translations, interpretations, and accommodations for people with disabilities.

SMC 14.19

Minimum Wage

SETS MINIMUM WAGES FOR EMPLOYEES

Large Employers (501 OR MORE EMPLOYEES)

\$16.69
PER HOUR

Small Employers (500 OR FEWER EMPLOYEES)

Does the employer pay at least \$1.69 per hour toward the individual employee's medical benefits and/or does the employee earn at least \$1.69 per hour in tips?

NO

\$16.69
PER HOUR

YES

\$15.00
PER HOUR

Employer Size
Count the employer's total number of all employees worldwide. For franchises, count all employees in the franchise network.

Medical Benefits - Small Employers
To pay the lower hourly rate, a small employer's payments must be for a silver-level or higher medical benefits program as defined by the federal Affordable Care Act.

» A small employer cannot pay the lower rate if the employee declines or is not eligible for medical benefits.

SMC 14.16

Paid Sick & Safe Time

REQUIRES PAID LEAVE FOR MEDICAL OR SAFETY ISSUES

Employers must provide employees with paid leave to care for themselves or a family member.
(Child, Parent, Spouse, Registered Domestic Partner, Grandparent, Grandchild, Sibling)

Sick Time: A physical or mental health condition, including a medical appointment

Safe Time: Reasons related to domestic violence, sexual assault, stalking or public health issues*

Paid Sick & Safe Time (PSST) Rates

	TIER 1	TIER 2	TIER 3
Employer Size FULL-TIME EQUIVALENT EMPLOYEES (FTEs) WORLDWIDE	Up to 49 FTEs	50 - 249 FTEs	250+ FTEs
Accrual of PSST PER HOURS WORKED	1 hour PER 40 HOURS	1 hour PER 40 HOURS	1 hour PER 30 HOURS
Carry over of unused PSST PER YEAR	40 hours	56 hours	72 hours**

*SAFE TIME CAN ALSO BE USED TO CARE FOR A HOUSEHOLD MEMBER

**108 HOURS FOR TIER 3 EMPLOYERS WITH A PAID TIME OFF (PTO) POLICY

SMC 14.17

Fair Chance Employment

LIMITS USE OF CONVICTION AND ARREST RECORDS

Prohibited:

- Job ads that exclude applicants with conviction or arrest records
- Job applications with questions about conviction or arrest records, unless the employer has already screened the applicant for minimum qualifications
- Job denial (or other adverse employment actions) based solely on an arrest record

Some exceptions apply, including jobs with unsupervised access to children under 16, people with developmental disabilities, or vulnerable adults.

Employers are required to:
Delay criminal background checks until after screening applicants for minimum qualifications

Follow procedures before taking an adverse action based solely on a criminal background check:

- » Provide an opportunity to explain or correct criminal background check information
- » Hold the position open for at least two business days
- » Have a legitimate business reason that employing the person will harm the business or impact the employee's ability to perform the job

SMC 14.20

Wage Theft

PROVIDES PROTECTIONS AGAINST WAGE THEFT

Employers must pay all compensation owed on a regular pay day and give employees written information about their job and pay.

Written information must include:

- Employer's name and contact information
- Employee's rate of pay, eligibility to earn overtime, pay basis (hour, shift, day, week, commission), and regular pay day
- Explanation of employer's tip policy
- Itemized statement of pay information on pay days

Examples of pay requirements:

- Pay minimum wage
- Pay overtime
- Pay for rest breaks
- Pay amount promised
- Pay for work off the clock
- Pay tips
- Pay service charges (unless listed on receipt or menu as not payable to the employee(s) serving the customer)
- Reimburse employer expenses
- No misclassification of employees

SMC 14.30

Commuter Benefits

Employers with 20 or more employees must offer employees, who work an average of ten hours or more per week, the ability to deduct transit or vanpool expenses from an employee's taxable wages up to the maximum level allowed by federal tax law. To meet this requirement, employers may instead provide a transit pass that is fully or partially subsidized. Employers must offer this benefit within 60 calendar days of the employee's start date.

OFFICE OF LABOR STANDARDS

Contact

Employees

File a complaint with OLS or file a lawsuit in court

206-256-5297

www.seattle.gov/laborstandards

Employers

Obtain compliance assistance and/or receive training

810 THIRD AVE, SUITE 375
SEATTLE, WA 98104

HOURS: 8 AM-5 PM (MON-FRI)
LABORSTANDARDS@SEATTLE.GOV

Los empleadores deben cumplir con estas leyes. Todo acto de represalia es ilegal.

Ordenanzas sobre Normas Laborales de Seattle 2021

La misión de la Oficina de Normas Laborales (Office of Labor Standards) es promover las normas laborales a través de la participación comunitaria y empresarial profunda, la aplicación estratégica y el desarrollo de políticas innovadoras, con un compromiso con la justicia racial y social.



Este afiche se debe mostrar en un área visible en el lugar de trabajo, en inglés y en los idiomas que hablen los empleados.

La Oficina de Normas Laborales ofrece traducción, interpretación y adaptaciones para personas con alguna discapacidad.

SMC 14.19

Salario mínimo

ESTABLECE SALARIOS MÍNIMOS PARA LOS EMPLEADOS

Grandes empleadores (501 EMPLEADOS O MÁS)

\$16.69
POR HORA

Tamaño del empleador

Cuente el número total de los empleadores de todos los empleados a nivel mundial. Para franquicias, cuente todos los empleados en la red.

Beneficios médicos: pequeños empleadores

Para pagar la menor tarifa por hora, los pagos de un pequeño empleador deben ser para un plan de beneficios médicos de nivel plata o superior, como se define en la Ley Federal de Cuidado Asequible de Salud.

» Un pequeño empleador no puede pagar la tarifa más baja si el empleado rechaza los beneficios médicos o no es elegible para ellos.

Pequeños empleadores (500 EMPLEADOS O MENOS)

¿El empleador paga al menos \$1.69 por hora por los beneficios médicos de cada empleado o el empleado gana al menos \$1.69 por hora en propinas?

NO

\$16.69
POR HORA

SÍ

\$15.00
POR HORA

SMC 14.16

Tiempo remunerado por enfermedad y asuntos de seguridad

REQUIERE PERMISO REMUNERADO POR PROBLEMAS MÉDICOS O DE SEGURIDAD

Los empleadores deben proporcionar permisos remunerados a los empleados para que cuiden de ellos o de sus familiares.

(Hijos, padres, cónyuges, pareja de hecho registrada, abuelos, nietos, hermanos)

Tiempo por enfermedad:
Condición física o de salud mental, incluidas citas médicas

Tiempo por razones de seguridad: Razones relacionadas con violencia doméstica, agresión sexual, acoso o problemas de salud pública*

Tiempo remunerado por enfermedad y asuntos de seguridad
(Paid Sick & Safe Time, PSST) Tarifas

Tamaño del empleador
EQUIVALENTE DE EMPLEADOS A TIEMPO COMPLETO
(FULL TIME EMPLOYEES, FTEs)
A NIVEL MUNDIAL

Devengo del PSST
POR HORAS TRABAJADAS

Acumulación del PSST
no devengado
POR AÑO

NIVEL 1

NIVEL 2

NIVEL 3

Hasta 49
FTE

50 – 249
FTE

250+
FTE

1 hora
POR 40 HORAS

1 hora
POR 40 HORAS

1 hora
POR 30 HORAS

40 horas

56 horas

72 horas**

* EL TIEMPO POR SEGURIDAD TAMBIÉN PUEDE UTILIZARSE PARA EL CUIDADO DE UN FAMILIAR

** 108 HORAS PARA EMPLEADORES DE NIVEL 3 CON LA POLÍTICA DE TIEMPO LIBRE REMUNERADO (PAID TIME OFF, PTO)

SMC 14.17

Oportunidad Justa de Empleo

LIMITA EL USO DE LOS ANTECEDENTES DE CONDENAS Y ARRESTOS

Están prohibidos:

- Los anuncios laborales que excluyan a aspirantes con antecedentes de condena o arresto
- Las solicitudes de empleo que incluyan preguntas sobre los antecedentes de condenas y arrestos, a menos que el empleador ya haya evaluado al aspirante en cuanto a las competencias mínimas
- La negación de empleo (u otras acciones adversas de empleo) con base únicamente en un antecedente de arresto

Algunas excepciones aplican, incluidos los trabajos con acceso no supervisado para menores de 16, personas con discapacidad de desarrollo o adultos vulnerables.

Los empleadores deben:

Retrasar la verificación de antecedentes penales hasta después de la evaluación de los aspirantes en cuanto a las competencias mínimas

Seguir los procedimientos antes de tomar alguna medida adversa basada únicamente en una verificación de antecedentes penales:

- » Brindar la oportunidad de explicar o corregir la información de la verificación de antecedentes penales
- » Mantener la vacante al menos dos días hábiles
- » Tener una razón comercial legítima que indique que emplear a la persona dañará la empresa o afectará la capacidad del empleado para realizar el trabajo

SMC 14.20

Robo de salarios

PROPORCIONA PROTECCIÓN CONTRA EL ROBO DE SALARIOS

Los empleadores deben pagar toda la compensación adeudada en un día regular de pago y suministrar a los empleados información escrita sobre su trabajo y pago.

La información escrita debe incluir:

- El nombre del empleador y la información de contacto
- La tarifa de pago del empleado, elegibilidad para ganar horas extras, base de pago (horas, turno, día, semana, comisión) y pago regular diario
- Explicación de la política de propinas del empleador
- Cuenta detallada de la información de pago en los días de pago

Ejemplo de requisitos de pago:

- Paga salario mínimo
- Paga horas extras
- Paga por tiempo de descanso
- Paga la cantidad prometida
- Paga por el trabajo fuera de las horas laborales
- Paga propinas recibidas
- Paga cargos por servicio (a menos que se detalle en el recibo o en el menú como no pagadero al empleado que atiende al cliente)
- Reembolsa los gastos del empleador
- No clasifica erróneamente a los empleados

SMC 14.30

Beneficios para las personas que viajan diariamente al trabajo

Los empleadores con 20 o más empleados deben ofrecer, a quienes trabajan en promedio diez horas o más por semana, la posibilidad de deducir gastos de traslado o de transporte compartido del salario gravable de un empleado hasta el nivel máximo permitido por la ley impositiva federal. Para cumplir con este requerimiento, los empleadores pueden proporcionar un pase de transporte que esté total o parcialmente subsidiado. Los empleadores deben ofrecer este beneficio dentro de los 60 días calendario de la fecha de inicio del empleado.

OFFICE OF LABOR STANDARDS

Contáctenos al

Empleados

Presentar una queja ante la Oficina de Normas Laborales o una demanda en un tribunal

Empleadores

Obtener ayuda para el cumplimiento o recibir capacitación

206-256-5297

www.seattle.gov/laborstandards

810 THIRD AVE, SUITE 375
SEATTLE, WA 98104

HORARIO: 8:00 A.M. A 5:00 P.M. (DE LUNES A VIERNES)
LABORSTANDARDS@SEATTLE.GOV

BEFORE THE HEARING EXAMINER CITY OF SEATTLE

OLS CASE NO. CAS-2020-00186

SUBPOENA DUCES TECUM

In re: Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri, Carlos Penunuri Ibarra, Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, Franco Corona, Onni Contracting (Washington) Inc., and Onni Group Inc.,

Respondents.

TO: **Baja Concrete USA Corp**
12360 NE 8th St., Suite 150
Bellevue, WA 98005

Roberto Contreras
c/o Baja Concrete USA Corp
12360 NE 8th St., Suite 150
Bellevue, WA 98005

Carlos Penunuri Ibarra
c/o Baja Concrete USA Corp
12360 NE 8th St., Suite 150
Bellevue, WA 98005

Claudia Penunuri
13590 SW 144th Ter.
Miami, FL 33177

Antonio Machado
c/o Newway Forming Inc.
Delue Law PLLC
600 Stewart St., Suite 1115
Seattle, WA 98101

Salvatore Giantomaso
c/o Newway Forming Inc.
Delue Law PLLC
600 Stewart St., Suite 1115
Seattle, WA 98101

Franco Corona
c/o Newway Forming Inc.
Delue Law PLLC
600 Stewart St., Suite 1115
Seattle, WA 98101

Newway Forming Inc.
Delue Law PLLC
600 Stewart St., Suite 1115
Seattle, WA 98101

Onni Contracting (Washington) Inc.
c/o Capitol Corporate Services, Inc.
1780 Barnes Blvd. SW
Tumwater, WA 98512

Onni Group Inc.
1001 John St.
Seattle, WA 98101

The Office of Labor Standards (OLS) is investigating alleged violations of the Paid Sick and Safe Time ordinance, Seattle Municipal Code (SMC) Chapter 14.16, and Wage Theft ordinance, SMC Chapter 14.20, in response to a complaint it received on February 6, 2020.

After reviewing the Notice of Investigation, Declaration of Daron Williams, and the Request for Information, the Hearing Examiner or Deputy Hearing Examiner has determined that there is reason to believe a violation has occurred and that Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri, Carlos Penunuri Ibarra, Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, Franco Corona, Onni Contracting (Washington) Inc., and Onni Group Inc. are in possession of or have control over certain papers, documents and records that are relevant and material to the investigation.

You are hereby ordered in the name of the State of Washington, City of Seattle, pursuant to SMC 14.16.070(E) and SMC 14.20.070(E), to give evidence in the above-entitled case regarding the wages, hours, and other conditions and practices of employment maintained by Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri, Carlos Penunuri Ibarra, Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, Franco Corona, Onni Contracting (Washington) Inc., and Onni Group Inc. before Investigators Daron Williams and Ashley Harrison, or the staff of OLS, by 5:00 p.m. PST on _____. Documents may be mailed to the attention of Daron Williams and Ashley Harrison at 810 Third Avenue, Suite 375, Seattle, WA 98104 or e-mailed to daron.williams@seattle.gov and ashley.harrison@seattle.gov. The evidence shall consist of the papers, documents and records identified in Attachment #1.

If you have any questions, please contact Investigator Daron Williams at (206) 733-9969 or Ashley Harrison at (206) 386-1930.

Entered this 16th day of July, 2020.

/s/ Ryan Vancil

Hearing Examiner
Deputy Hearing Examiner
Seattle Office of Hearing Examiner
700 Fifth Avenue, Suite 4000
Seattle, WA 98104

ATTACHMENT #1

to subpoena issued to Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri, Carlos Penunuri Ibarra, Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, Franco Corona, Onni Contracting (Washington) Inc., and Onni Group Inc.

A. DEFINITIONS

1. "You" and "your" shall include Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri, Carlos Penunuri Ibarra, Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, Franco Corona, Onni Contracting (Washington) Inc., and Onni Group Inc., and each of their affiliates, predecessors, successors, officers, directors, agents, representatives, attorneys, accountants, and consultants.
2. "Document" shall mean writings and recordings pursuant to Evidence Rule 1001, including any written, printed, typed, or other graphic matter of any kind, and all mechanical or electronic sound recordings or transcripts thereof, computer programs or data, e-mail, text messages, audio or video recordings, correspondence, facsimiles, notes, or phone logs, and shall include the original and all nonidentical copies, all drafts even if not published, disseminated, or used for any purpose, and all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any documents to be produced pursuant to this Subpoena.
3. "Relating to" means constituting, referring to, pertaining to, responding to, regarding, evidencing, explaining, discussing, depicting, analyzing, or containing any information which in any way concerns, affects, or describes the terms or conditions, or identifies facts, with respect to the subject of the inquiry.
4. "Baja Concrete" means Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri, and/or Carlos Penunuri Ibarra.

B. INSTRUCTIONS

1. Scope of Search. You are required to search for, obtain and produce all responsive documents, including documents that are in your custody or control, but not in your immediate possession. This includes any responsive documents in the possession, custody or control of any person acting on your behalf or under your direction or control, such as your employees, accountants, agents, representatives, attorneys or advisors.
2. Subject Period. Unless otherwise specified, the time period covered by this Subpoena is from February 6, 2017 to the date of production. Documents created prior to February 6, 2017 which have been used or relied on since February 6, 2017 or which describe legal duties which remain in effect after February 6, 2017 (such as policies and contracts), shall be considered as included within the time period covered by this Subpoena.

3. Privileges and Protections. If you do not produce documents because you object to part of or an aspect of a request, please provide a written response stating the precise basis for the objection and produce all documents responsive to the remaining part or aspect of the requests. If any documents responsive to this Subpoena are withheld because of a claim of privilege, please identify the documents you claim are privileged in a written response, and please indicate for each such document: 1) the nature of the privilege or protection claimed; 2) the factual basis for claiming the privilege or protection asserted; 3) the subject matter of the document; 4) the type, length and date of the document; 5) the author of and/or signatory on the document; and 6) the identity of each person to whom the document was directed or distributed.
4. Electronically Stored Information. If any document called for by this Subpoena exists as, or can be retrieved from, information stored in electronic or computerized form, then you are directed to produce the document in the format in which the document was created and maintained, provided it is one of the following formats: Microsoft Word (doc), WordPerfect (wpd), Rich Text (rtf), Microsoft Outlook (pst), Microsoft Outlook Express (msg), Microsoft Excel (xls), Microsoft Access (mdb), PDF, TIFF, CSV, ASCII, TXT, Concordance, Relativity or QuickBooks. Files of the preceding types can be submitted in a ZIP compressed format. Sufficient information including identification of the applicable software program and passwords, if any, should be provided to permit access to and use of the documents. Images created through a scanning process should have a minimum resolution of 300 dots per inch (dpi). Regardless of the format selected for producing a document, you are requested to preserve the integrity of the original electronic document and its contents, including the original formatting of the document, its metadata and, where applicable, its revision history.
5. Manner of Production. All documents produced in response to this Subpoena shall comply with the following instructions:
 - a. You should conduct your searches for responsive documents in a manner sufficient to identify the source and location where each responsive document is found.
 - b. All documents produced in response to this Subpoena shall be segregated and labeled to show the document request to which the documents are responsive and the source and location where the documents were found.
 - c. To the extent that documents are found in file folders and other similar containers that have labels or other identifying information, the documents shall be produced with such file folder and label information intact.
 - d. To the extent that documents are found attached to other documents, by means of paper clips, staples, or other means of attachment, such documents shall be produced together in their condition when found.
 - e. All documents provided in response to this Subpoena are to include the marginalia and post-its, as well as any attachment referred to or incorporated by the document.

- f. In the event that there are no documents responsive to a particular request, please specify that you have no responsive documents.
 - g. If documents relied upon or required to respond to this Subpoena, or requested documents, are no longer in your possession, custody, or control, you are required to state what disposition was made of such documents, including identification of the person(s) who are believed to be in possession or control of such documents; the date or dates on which such disposition was made, and the reason for such disposition.
6. Electronic Media. To the extent that the documents that are responsive to this Subpoena may exist on electronic media, those documents should be provided on one of the following media: Compact Disk – Read Only Memory (CD-ROM), Digital Versatile Disc – Read Only Memory (DVD), USB hard drive, or USB flash drive.

C. DOCUMENTS TO BE PRODUCED FOR THE SUBJECT PERIOD

- 1. Documents sufficient to determine the total hours worked per pay period by each employee of Baja Concrete from January 2017 to the date of production.
- 2. Time sheet records for all Baja Concrete employees between January 1, 2017 to the present on a pay period basis.
- 3. A payroll summary for all Baja Concrete employees from January 1, 2017 to the present.
- 4. Copies of paystubs for all Baja Concrete employees who performed work in Seattle for the past three years.
- 5. All written communications (including text and/or e-mail) between Antonio Machado, Roberto Contreras, Carlos Penunuri Ibarra, and/or any employee of Baja Concrete USA Corp, from 2017 to the present pertaining to Baja Concrete USA Corp and/or Newway Forming Inc, including but not limited to: hours worked by Baja Concrete USA Corp employees, requested sick leave for Baja Concrete USA Corp employees, and the 1120 Denny Way, Seattle, WA 98109 construction site.
- 6. Documents sufficient to show the complete addresses of all buildings and construction projects/sites in Seattle on which Baja Concrete acted as a contractor or subcontractor from 2017 to the present, and the dates during which any of these entities or individuals acted as a contractor or subcontractor;
- 7. All documents that relate to Baja Concrete's Paid Sick and Safe Time policy, including: records indicating when your employees can use Paid Sick and Safe Time; how they accrue Paid Sick and Safe Time hours; how much Paid Sick and Safe Time they can use each year; how much Paid Sick and Safe Time can employees carry over to the next year; how often you notify employees of their Paid Sick and Safe Time balances; and how you provide Paid Sick and Safe Time balance notification to employees;

8. All documents that relate to Baja Concrete's employees' use of Paid Sick and Safe Time hours for the period from January 12, 2017 to the date of production, including the dates that each employee used PSST and the amount of PSST used on each date;
9. Documents sufficient to show the addresses of Baja Concrete USA Corp's corporate offices; the names, titles and addresses of Baja Concrete USA Corp's corporate officers and owners; and the percentages of ownership for Baja Concrete USA Corp.
10. Documents sufficient to identify the entities or individuals that process Baja Concrete's payroll;
11. Documents sufficient to determine the ownership of Baja Concrete USA Corp.; and
12. Documents sufficient to determine the identity of each employee of Baja Concrete from January 2017 to the date of production, including each employee's name, position, home address, phone number, rates of pay and dates of employment.

EXHIBIT 2

Page 1

BEFORE THE HEARING EXAMINER
OF THE CITY OF SEATTLE

In the Matter of the Appeal of:)
Baja Concrete USA Corp., Newway)
Forming and Antonio Machado,)
) No. LS-21-002, 003, 004
From a Final Order of the Decision)
issued by the Director, Seattle)
Office of Labor Standards.)

ZOOM DEPOSITION UPON ORAL EXAMINATION
OF
KWYNNE FORLER-GRANT 30(b)(6)

9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

Page 1

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REPORTED BY: Pat Lessard, CCR #2104

1 Q. And is it fair to say there must have been a
2 lot more than what we see here in these Exhibits 3 and
3 4 we just looked at?

4 A. Yes, there are.

5 Q. Okay. And was there an approval process for
6 these, all these timecards?

7 A. Yes. Tom Grant wouldn't sign the invoices
8 submitted by Baja until we had backup. And that
9 therefore my Canadian office would not pay bills until
10 that was done.

11 So these were -- they wanted everybody to
12 come to the office, clock in. And Roberto Soto
13 Contreras would come in once a week and sit down with
14 Tom Grant and they would go through these.

15 And then Roberto would make his invoice.

16 Q. So Mr. Soto Contreras and Tom Grant would
17 sit down together and review, I guess, all of the
18 timecards for the week, correct?

19 A. Yes.

20 Q. And they would do this every week during the
21 relevant period of time?

22 A. Yes.

23 Q. And then if I understood you correctly,
24 Mr. Soto Contreras would then, with that information,
25 he would prepare Baja's invoices, is that correct?

1 A. Yes.

2 Q. Okay. Are there any steps in between that
3 we're leaving out, like a summary of hours worked?

4 A. No, there isn't.

5 Q. Well, you did say there must be a lot more
6 than just the few timecards we see in these Exhibits 3
7 and 4, correct?

8 A. Yes.

9 Q. Maybe we have them. I'm not sure.

10 MR. WANDLER: They have been produced.

11 MR. LARKIN: They were produced?

12 MR. WANDLER: Yes.

13 MR. LARKIN: I think you sent me that. I'll
14 take a look again later.

15 So with that I'll move on to Exhibit 5.

16 (Marked Deposition Exhibit No. 5.)

17 Q. (By Mr. Larkin) I'll scroll down.

18 Do you recognize what we see here?

19 A. Yes. Invoices.

20 Q. Yeah. I see it may be cut off a little bit
21 at the end. Sorry about that.

22 Is it your understanding that this would
23 have been an invoice from Baja Concrete to Newway
24 Forming?

25 A. Yes.

1 agreement stating that Baja would provide a service to
2 Newway. Was there a verbal agreement to that effect?

3 A. Yes.

4 Q. What exactly was the verbal agreement?

5 A. It was between Carlos Ibarra and Joe Rigo in
6 our Edmonton office.

7 Q. Okay. And Edmonton is in Canada, right?

8 A. Yes.

9 Q. Is that your headquarters?

10 A. No.

11 Q. I'm sorry. I think you said where your
12 headquarters were. Could you remind me one more time?

13 A. The headquarters is in Vancouver.

14 Q. Okay.

15 A. And for jobs in Calgary, Alberta and
16 Edmonton.

17 Q. Got it. Did Carlos and Joe Rigo have a
18 personal relationship?

19 A. I don't believe so.

20 Q. Do you know for sure?

21 A. No.

22 Q. Okay. Did Newway ask Baja to incorporate as
23 a company so that Baja could provide a service to
24 Newway?

25 A. No.

1 Q. Okay. Was Newway privy to Baja's
2 incorporation as a company or not?

3 A. I can elaborate the point that Joe Rigo said
4 it was an offhanded comment in Edmonton about Carlos
5 said he wanted to start in the United States and Joe
6 Rigo said "We have jobs in Seattle."
7 That's what I was informed.

8 Q. And did Newway ask Baja to register in
9 Washington in order to work with Newway in Seattle?

10 A. Not to my knowledge.

11 Q. So to your knowledge did Newway essentially
12 bring Baja to Seattle?

13 A. No.

14 Q. Can you elaborate on that, please?

15 A. They said that they wanted to work down
16 here. Maybe not in Washington, maybe it was in
17 Florida. And Joe just offered that "We have projects
18 in Seattle."

19 Q. Okay. Did any individuals at Baja have a
20 personal relationship with any individuals in Newway
21 at any point?

22 A. Yes.

23 Q. And who are those individuals?

24 A. Carlos Ibarra and Tony Machado.

25 Q. Anyone else?

1 Q. So you just stated that there was never
2 really any question as to whether the hours that Baja
3 reported were correct, right?

4 A. Yes.

5 Q. But did you also state that Newway was not
6 independently tracking the hours of workers on Baja's
7 payroll?

8 A. No. Not independently, no.

9 Q. So if Newway was not independently tracking
10 that how did Newway know that the hours that Roberto
11 was reporting were correct?

12 A. Once Tom and he, Roberto, went through it
13 the billing was submitted. And there was no questions
14 once Tom and he reviewed it.

15 Q. So tell me about the scope of that review.
16 What exactly were he and Tom reviewing together?

17 A. The timecards and the people.

18 Q. Did Tom and Roberto use the timecards to
19 verify that the number of hours on the Baja invoices
20 were correct?

21 A. Roberto typically had his own information.
22 We just used -- we just used that, I think, to
23 cross-reference. They could have had an issue with
24 some hours here and there. That wasn't the
25 implementation, the reasoning for the time clock.

1 have to look at it again. It just shows the flat
2 hours.

3 Q. What do you mean flat hours?

4 A. Eight, nine.

5 Q. If you add up the hours in a given week do
6 they ever total more than 40?

7 A. Yes.

8 Q. Did Newway's own records reflect the fact
9 that workers in fact worked more than 40 hours in a
10 week?

11 A. We don't keep records of subcontractors.

12 Q. Was Baja aware that workers were not being
13 paid time and a half for overtime hours? I'm sorry,
14 was Newway aware that Baja workers were not getting
15 time and a half for overtime hours?

16 MR. LARKIN: Object to the form of the
17 question.

18 A. No.

19 Q. (By Ms. Franklin) Okay. And I just have a
20 little bit about work shifts.

21 Did the hours that workers on the relevant
22 worksites worked, did those vary from day to day
23 during the relevant time period, the number of hours?

24 A. Yes.

25 Q. Who determined how many hours these workers

1 I'm not sure you stated in your question.

2 Q. (By Ms. Franklin) Sure. I meant -- let's
3 break it up.

4 So workers generally speaking, was Newway
5 the decision maker in determining how many hours were
6 available to them?

7 A. For our employees or Baja employees?

8 Q. All employees.

9 A. They are for their scope of work.

10 Q. Okay. So for Baja workers on Baja's payroll
11 was Newway the decision maker in determining how many
12 hours would be available to them and offered to those
13 workers?

14 A. Roberto would decide the hours. They're
15 their own subcontractor.

16 Q. Would Roberto decide that based on
17 directions he received from Newway?

18 A. Yes.

19 Q. Was Roberto onsite the whole time during the
20 relevant time period?

21 A. I believe -- he's on timecards, I believe.
22 And I think it was mostly on 1120 Denny Way.

23 Q. Was there --

24 A. Go ahead.

25 Q. I'm sorry. Please finish your answer.

1 and a worker on Baja's payroll was not available for
2 the additional hours, what would happen?

3 A. We may get behind schedule.

4 Q. And who would that worker communicate to to
5 say that he was unavailable?

6 A. Roberto.

7 Q. And what would Roberto do with that
8 information?

9 A. Inform the leads that there's nobody
10 available.

11 Q. And then what would happen after that?

12 A. There would just be work for another day.

13 Q. Okay. Was the person penalized in that
14 situation?

15 A. You would have to ask Baja. I don't know.

16 Q. Okay. So did Baja workers on the relevant
17 worksites during the relevant time period take breaks?

18 A. That would have been controlled by Roberto.
19 I'm not sure.

20 Q. Were breaks determined on a site-wide basis
21 at 1120 Denny?

22 A. I believe the lunch was just as a whole.
23 It's not ringing a bell, but because the food trucks
24 would ring their bells pretty much on 2014.

25 I mean it's up to the subcontractors to tell

1 their people when they're going to have breaks.

2 Q. Could breaks happen at any time or were
3 there certain times during the course of the work that
4 it would not be appropriate for workers to take a
5 break?

6 A. It was a pretty standard agreement when they
7 had them. I would say like 10:30 and 2:30.

8 That was our people.

9 Q. So did Baja people take their breaks at
10 10:30 and 2:30 as well?

11 A. I wasn't onsite. I'm not sure.

12 Q. And whose decision was it that lunch breaks
13 could be timed for the food trucks?

14 A. The construction workers.

15 Q. What if a worker from Baja needed an extra
16 break or a break outside of a normally scheduled one,
17 who would he have to ask?

18 A. Roberto.

19 Q. And what would Roberto do when he got that
20 request?

21 A. I have no idea. You'd have to ask Baja.

22 Q. Did Newway have any authority over when Baja
23 workers could take breaks?

24 A. No.

25 Q. What was Newway's policy for Newway workers

1 who were calling out sick?

2 A. You mean we had sick leave?

3 Q. Yes.

4 A. They would let their leads know.

5 Q. Okay. And what about a Baja worker on a
6 Newway site, what was the process?

7 A. They would ask Roberto Soto.

8 Q. And what would Roberto Soto do with that
9 request?

10 A. I have no idea. You would have to ask him.

11 Q. If a worker from Baja was calling out sick
12 would Newway's personnel be informed of that?

13 A. Most times, yes.

14 Q. Would they have any discretion as to whether
15 or not the worker could call out sick?

16 A. Newway, no. No.

17 Q. How did calling out sick affect worker pay
18 for Baja workers?

19 A. I have no idea.

20 Q. When a worker called out sick would that be
21 reflected in the invoices that Baja sent to Newway?

22 A. No.

23 Q. Did Newway track sick leave for Baja
24 workers?

25 A. No.

1 respect to the payment of invoices to Baja during the
2 relevant time period?

3 A. With check stubs.

4 Q. Anything else?

5 A. We have a software program called Adagio.
6 They would all be entered into there.

7 Q. Okay. And does Newway retain those records?

8 A. Yes.

9 Q. Any other records associated with payment of
10 invoices that Newway would generate?

11 A. No.

12 Q. How were Baja workers on the relevant
13 worksites hired?

14 A. I have no idea.

15 Q. Did Newway have any input into the hiring
16 process?

17 A. No.

18 Q. Did Roberto keep Newway apprised of the
19 hiring process?

20 A. No.

21 Q. And did Newway tell Roberto how many workers
22 it needed?

23 A. No.

24 Q. So you said that -- let me make sure I
25 understand your prior testimony.

1 conversations about getting workers to work on the
2 site?

3 A. No.

4 Q. Was it a one-time conversation?

5 A. Roberto would just say he's got somebody and
6 then they'd bring them to the site.

7 Q. What would prompt Roberto to tell Newway
8 that he had somebody?

9 A. They wanted to use more people.

10 Q. So would Newway communicate to Roberto that
11 they needed more people?

12 A. I don't believe it was ever that way. It
13 was the opposite way.

14 Q. Can you specify what you mean by that?

15 A. Baja -- Roberto would say he has people,
16 they need work and they'd go to Newway.

17 Q. How did Roberto know that more workers were
18 needed?

19 A. He didn't. We can go out and hire
20 anybody -- Newway can go hire anybody we want to.
21 Roberto would say he has people and they need work
22 and we hired them. He hired them to bring them on.

23 Q. When he did that did he give any information
24 to Newway about the people he had?

25 A. Like?

1 A. If it was noticed -- any subcontractor, if
2 it's noted that somebody doesn't have the skillset
3 then it would be reported to their supervisor, super.
4 In this case Roberto Soto.

5 Q. Okay. Were Baja workers on the relevant
6 worksites ever fired during the relevant time period?

7 A. I wouldn't know that. You'd have to ask
8 Baja.

9 Q. Did Newway play any role in firing workers?

10 A. For Baja?

11 Q. Yes.

12 A. No.

13 Q. But Newway might notice that a worker did
14 not have the right qualifications and inform the
15 subcontractor's lead person, right?

16 A. Right. But they didn't directly hire or
17 fire anybody. A lot of times if we get a carpenter
18 that doesn't have the skillset they are moved to labor
19 because the union took them in improperly. They
20 weren't the level that they should have been.

21 I don't know what Baja did with somebody
22 that the foreman said that they didn't have the
23 skillset. I'm not sure.

24 Q. I'm going to ask you generally about all
25 workers. How were workers on the relevant worksites

1 disciplined?

2 A. Two writeups, on a third, termination.

3 Q. And what about Baja workers, was that the
4 same process?

5 A. We didn't have any control over their
6 workers for hiring or firing.

7 Q. If a Baja worker needed a writeup, would
8 someone from Newway communicate that to Roberto?

9 A. I suppose so. It would be Roberto.

10 Q. If Roberto fired a worker would Newway be
11 notified?

12 A. No.

13 Q. What about -- I'm sorry, I didn't mean to
14 talk over you. Go ahead and finish.

15 A. No, go ahead.

16 Q. If Roberto disciplined a worker would anyone
17 at Newway be notified?

18 A. No.

19 Q. Okay. So now I want to step back a little
20 bit and ask you about the work that was being done on
21 this worksite. And again you're going to have to
22 excuse me because I don't know much about construction
23 work.

24 So what was Newway brought on to the
25 relevant worksites to do?

1 see if I can rephrase that.

2 So you said that -- so Baja was the
3 subcontractor of Newway, correct?

4 A. Yes.

5 Q. What was Baja's role in helping Newway with
6 the tasks that it was doing for Onni?

7 A. Concrete finishing.

8 MR. WANDLER: I don't think she got the
9 answer.

10 A. Cement finishing, concrete finishing.

11 Q. (By Ms. Franklin) Okay. Can you just
12 explain again -- I'm just not really understanding
13 construction -- how did cement finishing fit into the
14 job that Newway was being asked to do?

15 A. We poured the concrete and they patch it,
16 sand it, that kind of thing, build forms to pour the
17 concrete in. And then that would be labor force ends
18 up finishing.

19 Q. Okay. Could Newway have done its job for
20 Onni without somebody fulfilling the role that Baja
21 was playing?

22 A. We have cement finishers on staff.

23 Q. But is cement finishing essential to
24 Newway's task?

25 A. Cement finishing, yes.

1 Q. Okay. Now let's talk about the other
2 worksites.

3 So for the 707 Terry, was Newway's role the
4 same in its contract there?

5 A. Yes.

6 Q. And was Baja's role the same?

7 A. They were only brought on for one week, but
8 yeah.

9 Q. And what were they brought on to do in that
10 one week?

11 A. I believe labor, which would be setting up
12 the forms to pour the concrete in.

13 Q. Okay. Is that something that needed to
14 happen in order for Newway to complete its tasks at
15 707 Terry?

16 A. Yes, but we can hire out of the union. We
17 can hire PeopleReady. It wasn't imperative that we
18 have Baja.

19 Q. Okay. And what about 2014 Fairview Avenue,
20 was Newway's contractual task the same?

21 A. Yes.

22 Q. And what about Baja's?

23 A. Yes.

24 Q. How did it come to be that Baja workers were
25 dispatched to 707 Terry?

1 A. Yes.

2 Q. It says "Do you want me to ask Roberto for
3 last names and ask your staff to come to meet the new
4 supers? I noticed he used to put their last names but
5 doesn't now."

6 MS. FRANKLIN: Lorna, can you make it the
7 other way? Oh, make it narrow. I'm sorry.

8 Q. (By Ms. Franklin) "I noticed he used to put
9 their last names on but doesn't now."

10 What were you talking about there?

11 A. I think that's in response to Adam telling
12 me and Connor -- actually, no. Connor, I think,
13 started it and told me about the whiteout situation.

14 And then I went and reviewed that he wasn't
15 putting last names anymore, because there would be
16 three Robertos, two Joses, and he wasn't using the
17 last names anymore.

18 And then this is kind of in sync with Tom
19 saying "Unless we do something I don't want to sign
20 these invoices anymore because I don't know what's
21 going on."

22 Q. Do you have any idea why Roberto was not
23 using last names?

24 A. No.

25 Q. And then it says "What else can I say so you

1 can get them to the office so you know them visually?"

2 What were you referring to there?

3 A. Tom said "I don't know who they are. I
4 don't know them visually and how can we get them to
5 the office so I can start learning who they are, so I
6 know who's onsite."

7 Q. Okay. And was it Newway's practice after
8 this to, I guess, lay eyes on the workers associated
9 with a given invoice?

10 A. Yes.

11 Q. And it says "As you know, we are bleeding on
12 Denny so any extra costs hurt and if there is
13 suspected fraud there I want to catch it now so we
14 don't hear why we didn't notice later."

15 Did Newway suspect fraud on the part of
16 Roberto?

17 A. In relation to the irregularities we had
18 seen recently, yes.

19 Q. Okay. Let's move on to the next exhibit.
20 Is this now Exhibit 13?

21 (Marked Deposition Exhibit No. 13.)

22 MR. WANDLER: Yes.

23 Q. (By Ms. Franklin) Okay. Can you see this
24 fully now?

25 A. Yes.

1 phone but we installed a time clock specifically for
2 Baja employees to make sure that they weren't
3 overcharging us because their timesheets were very
4 vague i.e. several of the first names and no last name
5 listed."

6 What did you mean by to make sure they
7 weren't overcharging you?

8 A. For people that weren't onsite.

9 Q. And how did you use the time clock to
10 ensure -- does this email indicate that you used --
11 Newway used the time clock to ensure that they weren't
12 being overcharged by Baja?

13 A. So we could visually see them and a physical
14 body had to come into the office and put that in the
15 machine.

16 Q. Okay. Let's move on to the next one,
17 Exhibit 15.

18 (Marked Deposition Exhibit No. 15.)

19 MS. FRANKLIN: So this is the last exhibit.

20 Can you just go ahead and scroll so she can
21 see the exhibit.

22 MR. WANDLER: Are these documents that have
23 been produced in discovery? Do we have Bates labels
24 on them? I just don't --

25 MS. FRANKLIN: Well, this one was produced

1 MS. FRANKLIN: I think it was a bit
2 different but maybe we can figure that out.

3 THE WITNESS: It is.

4 MS. FRANKLIN: That concludes my questions.
5 Thank you very much for your time.

6 THE WITNESS: Thank you.

7 MR. WANDLER: I'm going to ask just a couple
8 clarifying questions. It won't take too long.

9 E X A M I N A T I O N

10 BY MR. WANDLER:

11 Q. Going back to the time clock and the
12 exhibits that we just went through, I believe it was
13 Exhibits 12, 13 and 14, the emails talking about
14 bringing in the system to monitor that, was that
15 relating to the time clock that you testified about
16 earlier, the time clock that you were referring to in
17 those emails?

18 A. Yes.

19 Q. Is that the time clock you were testifying
20 to earlier during Alex's questioning?

21 A. Yeah.

22 Q. And what was the intent of bringing the time
23 clock onto the site? Was it to track individual hours
24 worked by each individual Baja employee or was it just
25 to verify that they were onsite?

1 A. Verify that they were on site.

2 Q. And with regards to the Baja invoices, I
3 think there was a series of questions where they asked
4 you whether or not break time was included in the
5 invoice or sick time was included in the invoice.

6 Was there any way for you, Newway, to be
7 able to tell whether those items were included in the
8 invoice?

9 A. No.

10 Q. Did the invoices in any way break out what
11 was being paid to the Baja employees as opposed to
12 what Baja was asking to be paid?

13 A. No.

14 Q. So there was no information contained in
15 there about what the employees were being paid or not?

16 A. No.

17 Q. Whether they were working overtime or not?

18 A. No.

19 Q. Whether they were taking sick time or not?

20 A. No.

21 Q. Whether or not they were receiving paid
22 breaks?

23 A. No.

24 Q. Just in terms of the process of a
25 construction site, let's walk through the day, and

1 I'll do it on a piece-by-piece basis.

2 A. Okay.

3 Q. You talked about the early morning meetings
4 where tasks are assigned.

5 What's the basis for the assignment of those
6 tasks? In other words, who comes up with what tasks
7 need to be done and where does that come from?

8 A. The scope of work.

9 Q. Where is that defined?

10 A. It's defined by a schedule.

11 Q. Who creates the schedule?

12 A. Onni.

13 Q. Onni. And Onni is the general contractor?

14 A. Yes.

15 Q. So if I understand correctly, every day Onni
16 prepares the schedule and you guys know what you're
17 supposed to do, you have a meeting.

18 What's discussed at the meeting?

19 A. Each individual subcontractor's scope of
20 work.

21 Q. Okay. Is it the subcontractor's
22 responsibility to determine how they perform that
23 scope of work?

24 A. Yes.

25 Q. Is it their responsibility to determine how

1 many people they need to complete that scope of work?

2 A. Yes.

3 Q. Does Newway have any say in the means and
4 methods and the labor that goes into a subcontractor's
5 performance of their scope of work?

6 A. No.

7 MR. WANDLER: That's all I have.

8 MR. LARKIN: I have a few follow-up
9 questions if this is my time.

10 E X A M I N A T I O N

11 BY MR. LARKIN:

12 Q. You testified, if I got it right this
13 morning, that it was about a year and a half into the
14 relevant time period when you spotted, I think you
15 said, what appeared to be maybe three irregularities,
16 correct?

17 A. Yes.

18 Q. That was "Yes" for the record. I'm not sure
19 if that was clear.

20 So a year and a half in. So by that time
21 there had been a whole lot of daily labor provided by
22 Baja to Newway, correct?

23 A. Yes.

24 Q. And prior to the time clock, so during that
25 first year and a half portion of the relevant time

1 end date but it's not written in stone.

2 Q. But the pace for how to proceed from
3 beginning date to end date was in Newway's discretion?

4 A. It's in Onni's discretion.

5 Q. Did Newway have any discretion as to when to
6 start and stop each task?

7 A. No. It's based on Onni's schedule and where
8 we have to be within that schedule. Because they're
9 doing plumbing, electrical, landscape, all that kind
10 of stuff, so we all have to -- and crane time -- so we
11 all have to follow their schedule for the tasks that
12 need to be completed.

13 Q. Did Newway make any discretionary decisions
14 in determining how to stay on track on that schedule?

15 A. I mean every subcontractor would be involved
16 in making sure that things got done in the time that
17 they needed to be done.

18 Mostly it reflects on crane time.

19 Q. Who determined how long each task had to get
20 done?

21 A. Onni has a schedule, all highlighted in
22 colors, who is what, where we have to be and the dates
23 up on the top.

24 Q. And did that schedule ever leave room for
25 Newway to make quick decisions about how to go about a

1 given task?

2 A. We could be behind schedule. But other than
3 that we had to follow it and it's mostly determined
4 because of crane time.

5 Q. What would Newway do if it was behind
6 schedule?

7 A. Well, we were behind on that job, the whole
8 thing, so I don't think we ever really made it up.

9 It depends. If they asked for somebody to
10 volunteer, then work could get done on a certain day,
11 but it wasn't demanded.

12 Q. Did Newway have to make decisions on a
13 day-to-day basis to try to get back on schedule?

14 A. We could try. But like I said, it's all
15 based around crane time. And if somebody had it, you
16 know, for those hours, we couldn't make it up. It
17 would be impossible.

18 Q. Who determined crane time?

19 A. Onni, Mr. Martinez.

20 Q. Did Newway have to strategize as to how to
21 fit its work in when it had crane time?

22 A. Yes.

23 Q. And did it pass those strategic decisions on
24 to its subcontractors?

25 A. Yes.

1 S I G N A T U R E

2 I declare under penalty of perjury under the
3 laws of the State of Washington that I have read my within
4 deposition, and the same is true and accurate, save and
5 except for changes and/or corrections, if any, as indicated
6 by me on the CHANGE SHEET flyleaf page hereof.

7 Signed in _____, Washington,
8 this _____ day of _____, 2022.

9

10

11 -----

12 KWYNNE GRANT

13 Taken: May 5, 2022

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22 Re: Appeal of Baja Concrete
Cause No.: LS-21-002, 003, 004
23 Pat Lessard, CCR 2104

24

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C E R T I F I C A T E

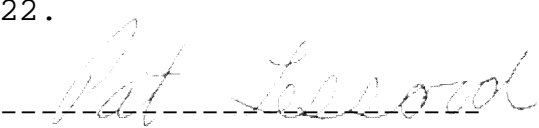
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of KWYNNE GRANT was taken stenographically by me on May 5, 2022 and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor am I financially interested in its outcome.

I further certify that in accordance with CR 30(e) the witness was given the opportunity to examine, read and sign the deposition within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand and seal
12th day of May, 2022.



Pat Lessard,
pat@court-reporter.com



EXHIBIT 3

In the Matter of the Appeal of:)
Baja Concrete USA Corp., Newway)
Forming and Antonio Machado,)
) No. LS-21-002, 003, 004
From a Final Order of the Decision)
issued by the Director, Seattle)
Office of Labor Standards.)

ZOOM DEPOSITION UPON ORAL EXAMINATION
OF
DARON WILLIAMS 30(b)(6)

9:00 a.m.

April 28, 2022

REPORTED BY: Pat Lessard, CCR #2104

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A P P E A R A N C E S

FOR ANTONIO MACHADO:

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1 Q. So did anyone from OLS actually observe who
2 was instructing or hiring or firing or determining
3 break times for the workers or activities of the
4 workers?

5 A. No. Like I mentioned last time, it was
6 during the pandemic during 2020 so we couldn't really
7 go out there.

8 Q. What is OLS's understanding of what Newway
9 Forming's role was in these projects, the 1120 Denny
10 Way project and the other two projects we've
11 mentioned?

12 A. They were a subcontractor of Onni and they
13 hired Baja.

14 Q. Hired Baja for what?

15 A. Cement work.

16 Q. Cement work. Would that be supply of
17 cement?

18 A. Laying down cement, using carpenters,
19 laborers.

20 Q. Laborers. Does OLS know whether Baja had
21 any office on location or a facility on location at
22 these project sites?

23 A. Not that we were aware of.

24 Q. Did Newway Forming have offices or other
25 facilities at these project sites?

1 conclusion.

2 A. Can you repeat that question again? Sorry.

3 Q. (By Mr. Larkin) Based on the testimony you
4 provided this morning so far I understand, and from
5 what we've seen in this document, you believe that
6 Baja Concrete paid the workers, correct?

7 A. Yes.

8 Q. And OLS also is of the view that Baja
9 Concrete provided cement finishers, cement-related
10 labor to Newway Forming, correct?

11 A. That's correct.

12 Q. Did Baja Concrete do anything else in
13 addition to those things that would indicate that they
14 were a joint employer in this case?

15 MS. FRANKLIN: Objection; calls for a legal
16 conclusion.

17 A. Yes.

18 Q. (By Mr. Larkin) And what else did Baja
19 Concrete do?

20 A. They would hire individuals. They set up
21 their housing. They had people in apartments. They
22 processed their tax documents. They did a few other
23 things.

24 Q. So all those things that you just identified
25 as things that Baja did, the reason OLS believes that

1 A. The interviews.

2 Q. The interviews where you said you
3 participated in some of the interviews but not all of
4 them, correct?

5 A. Yeah.

6 MS. FRANKLIN: And just to clarify, at this
7 point are you asking about the witness specifically
8 rather than OLS when you say "you"?

9 MR. LARKIN: Oh, good point.

10 I was referring to Mr. Williams as part of
11 the interviewers for OLS.

12 MS. FRANKLIN: Thank you.

13 Q. (By Mr. Larkin) And you just described it
14 as "testimony of workers." So these interviews
15 resulted in written witness statements, correct?

16 A. Yes.

17 Q. And so the information provided by witnesses
18 which are stated in these witness statements, that's
19 testimony, correct?

20 A. Yes.

21 Q. Did the witnesses that were interviewed, did
22 they sign those witness statements?

23 A. No. Well, you said the workers or the --

24 Q. The workers.

25 A. Yes. They're not signed.

1 Q. Okay. And what is OLS's understanding of
2 why a worker would be asked to sign those witness
3 statements?

4 A. Repeat that again. Sorry.

5 Q. Why would OLS request that a worker who was
6 interviewed as part of this investigation sign their
7 witness statement?

8 MS. FRANKLIN: Objection; lacks foundation.

9 A. I'm not entirely sure.

10 Q. (By Mr. Larkin) Well, you said these
11 witness statements are or contain testimony, correct?

12 MS. FRANKLIN: Objection; calls for a legal
13 conclusion.

14 A. Yes.

15 Q. (By Mr. Larkin) Okay. When OLS was
16 conducting the interviews in this investigation was
17 there anyone present, to your knowledge, who had the
18 authority to swear in the witnesses?

19 MS. FRANKLIN: Objection; calls for a legal
20 conclusion.

21 A. No.

22 Q. (By Mr. Larkin) I'm thinking about the way
23 this deposition -- you were sworn in at the beginning.

24 A. Yes.

25 Q. So the witnesses who were interviewed by OLS

1 in this investigation, were they sworn in or were they
2 not sworn in, as far as you recall?

3 A. They were not sworn in, no.

4 MR. LARKIN: Okay. I'm going to move on to
5 a different exhibit.

6 It's only 10:00 o'clock but does anyone want
7 to take a break?

8 MS. FRANKLIN: I would defer to the witness
9 on our end.

10 THE WITNESS: I'm okay.

11 MS. FRANKLIN: Thank you.

12 Q. (By Mr. Larkin) So I'm going to go on to
13 the next exhibit which -- I'll stop sharing.

14 This exhibit is marked as Exhibit 3.

15 (Marked Deposition Exhibit No. 3.)

16 Q. (By Mr. Larkin) Do you recognize this
17 document?

18 A. Yeah.

19 Q. Again, I'll scroll through it here. This is
20 a twelve-page long document.

21 What is this document, Mr. Williams?

22 A. Well, they're two separate documents. The
23 first one is the Notice of Investigation with the
24 corresponding cover letter.

25 The second one is the Request for

1 introduce are the various witness statements.

2 A. Okay.

3 MR. LARKIN: I don't know if anyone would
4 like to take a short break before we shift gears into
5 that section of the deposition.

6 MS. FRANKLIN: I'll defer to the witness.

7 THE WITNESS: If we could take a five-minute
8 break.

9 MR. LARKIN: Let's take five minutes, so
10 we'll come back about 10:50.

11 THE WITNESS: That works.

12 (Recess.)

13 Q. (By Mr. Larkin) So Mr. Williams, speaking
14 on behalf of OLS, is it OLS's position that Baja
15 controlled the activities of the workers at issue in
16 this investigation?

17 A. Can you define activity?

18 Q. The work activities onsite at the various
19 project sites.

20 A. Maybe at some point a little.

21 Q. At some point a little. But mostly it was
22 other parties that directed their activities?

23 A. Yes, from our uncovering stuff it was mainly
24 Newway.

25 Q. Do you know whether Baja set the wages, the

1 pay rates for the workers?

2 A. Yes, that's what I'm saying.

3 Q. Do you know whether Baja recruited, hired
4 and, let's say, terminated workers?

5 A. To my understanding, yes.

6 Q. On behalf of OLS would you say that the
7 workers performed work for the benefit of Baja?

8 A. I think Baja and Newway.

9 Q. Do you know whether there was any Baja
10 equipment related to this cement work or other work --
11 was there any Baja equipment located at the project
12 sites?

13 A. Not to my knowledge.

14 Q. Do you know whether or not the workers or
15 any of them performed work duties at the premises of
16 Baja rather than the project sites?

17 A. I don't think Baja really had a premises,
18 so.

19 Q. Do you know whether the workers provided
20 specialty skills which were essential to Baja?

21 A. I guess you could say that, yes.

22 Q. Could you also say the workers provided
23 specialty skills that were essential to Newway
24 Forming?

25 A. Yes, I guess you could say that as well,

1 here about under penalty of perjury.

2 Can the OLS certify -- the OLS conducted
3 this interview. Can the OLS certify under penalty of
4 perjury that the information provided in this witness
5 statement is true and correct?

6 MS. FRANKLIN: Objection; calls for a legal
7 conclusion.

8 A. When you stated to them at the beginning
9 that this document has to be accurate and complete
10 based on your knowledge under the penalty of perjury.

11 So that's the best answer I can give you.
12 I'm not sure what you're looking for there but that's
13 the best answer I can give you.

14 Q. (By Mr. Larkin) When you stated that, what
15 you just said, did you also explain to them, to any
16 witness that you interviewed, did you explain to them
17 that they would have an opportunity to review the
18 witness statement before signing it?

19 A. I don't know if we did or not. I don't
20 think so.

21 Q. So you believe you told them verbally that
22 this was being done under penalty of perjury, this
23 interview, and that the responses would have to be
24 provided accordingly, but you did not or you don't
25 recall whether they were informed that they would have

1 disclosed his name, did this witness provide the
2 information that's stated in this witness statement,
3 did he provide that under penalty of perjury?

4 MS. FRANKLIN: Objection; calls for a legal
5 conclusion.

6 A. Yes. I can give an answer to that question.

7 Q. (By Mr. Larkin) I'm not trying to be
8 redundant.

9 Can the OLS certify under penalty of perjury
10 that the information provided in this witness
11 statement by the interviewee is true and correct?

12 MS. FRANKLIN: Objection; calls for a legal
13 conclusion.

14 A. That's what I stated to him, yeah.

15 Q. (By Mr. Larkin) But in the wording just
16 above that all caps portion, page seven, it says "I
17 acknowledge" -- and this should be the interviewee,
18 presumably -- "I acknowledge I have been provided an
19 opportunity to review and correct the accuracy of this
20 statement based on my recollection of the interview."

21 Did this witness have an opportunity to
22 review and correct the accuracy of this statement?

23 A. No.

24 Q. Why not?

25 A. I think that's part of attorney-client

1 privilege at that point, so.

2 Q. Were there any attorneys present for this
3 interview?

4 A. No.

5 Q. Was there anyone present at this interview
6 who had the authority to swear in the witness?

7 MS. FRANKLIN: Objection; calls for a legal
8 conclusion.

9 A. No.

10 MR. LARKIN: Okay. I'll move to Exhibit 10.

11 (Marked Deposition Exhibit No. 10.)

12 Q. (By Mr. Larkin) This is marked as
13 Exhibit 10. I'll scroll through on this one.

14 We see the word "End" on page seven.

15 Scrolling back to the beginning, do you
16 recognize this document?

17 A. Yes.

18 Q. What is this document?

19 A. It's some interview notes.

20 Q. So it's essentially another one of those
21 like the two or three exhibits we just looked at,
22 these are notes, information?

23 A. Yes.

24 Q. Notes taken during or maybe subsequent to
25 the interview of a witness as part of this

1 investigation, correct?

2 A. Yes.

3 Q. And scrolling down to the bottom of this,
4 the last page, did the witness sign this witness
5 statement?

6 A. Nope.

7 Q. Was this witness given an opportunity to
8 review this statement and correct any inaccuracies
9 that may be in here?

10 A. I don't believe so.

11 Q. Is there any wording on this witness
12 statement or at the end of it or anywhere about this
13 being provided under penalty of perjury?

14 A. It was given verbally, like I've mentioned
15 quite a few times now, that we do it verbally.

16 Q. But was the witness sworn in for this
17 interview?

18 A. No. No witness was sworn in for any
19 interview.

20 Q. So none of the witnesses in this
21 investigation, ten of them that I'm aware of,
22 Mr. Machado, one other Newway foreman and Mr. Ponce
23 and then these seven names which are not disclosed,
24 none of these were sworn in for each of these,
25 correct?

1 S I G N A T U R E

2 I declare under penalty of perjury under the
3 laws of the State of Washington that I have read my within
4 deposition, and the same is true and accurate, save and
5 except for changes and/or corrections, if any, as indicated
6 by me on the CHANGE SHEET flyleaf page hereof.

7 Signed in _____, Washington,
8 this _____ day of _____, 2022.

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12 DARON WILLIAMS

13 Taken: April 28, 2022

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22 Re: Appeal of Baja Concrete
Cause No.: LS-21-002, 003, 004
23 Pat Lessard, CCR 2104

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C E R T I F I C A T E

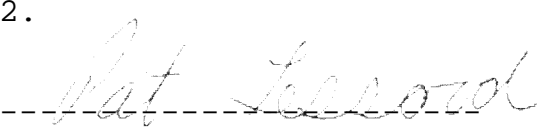
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of DARON WILLIAMS was taken stenographically by me on April 28, 2022, and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor am I financially interested in its outcome.

I further certify that in accordance with CR 30(e) the witness was given the opportunity to examine, read and sign the deposition within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand and seal
4th day of May, 2022.



Pat Lessard,
pat@court-reporter.com



EXHIBIT 4

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal)
of:)
)
Baja Concrete USA Corp.,)
Newway Forming Inc., and)
Antonio Machado,)
) Hearing Examiner File
From a Final Order of the) No. LS-21-002
Decision issued by the) LS-21-003
Director, Seattle Office of) LS-21-004
Labor Standards)

ZOOM VIDEO CONFERENCE DEPOSITION UPON ORAL EXAMINATION
OF
DARON WILLIAMS

ATTENDANCE OF ALL PARTICIPANTS VIA
ZOOM VIDEO CONFERENCE

10:02 a.m.
February 3, 2022

REPORTED BY: Lauren G. Harty, RPR, CCR #2674

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12 ALSO PRESENT: CLAUDIA PENUNURI

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1 exhibit we looked at, who would have prepared this
2 document or who drafted this document?

3 A. Myself.

4 Q. So you were -- you were -- asked questions
5 of the person that -- that was being interviewed,
6 correct?

7 A. Yes. That's correct.

8 Q. Through a translator --

9 A. Yes.

10 Q. -- correct?

11 And so these what appear to be responses to
12 your questions would have been provided to you by the
13 translator, correct?

14 A. That is correct.

15 Q. When you did this interview and other
16 interviews did you actually record them, create an
17 audio regarding of the interviews?

18 A. No.

19 Q. So were you -- when you do these interviews,
20 this one and -- and the other ones, do you normally
21 have a computer there and you're actually typing the
22 responses to questions during the interviews? Is that
23 correct?

24 A. Yes.

25 Q. And would that be true with this one here

1 with -- this translator was providing the
2 interviewee's responses with you actually typing out
3 those responses during the interview?

4 A. That's correct.

5 Q. Okay.

6 So back to my previous question -- I don't
7 know if you can still see my cursor. There -- there
8 it is. So that sentence beginning with, "Newway...",
9 would you mind reading that, please?

10 A. "Newway and Omni are the main owners of the
11 project, but we are closely connected to Newway."

12 Q. Okay.

13 And in the same response further down the
14 very bottom line beginning with, "Roberto" -- well,
15 actually go ahead and read this whole sentence that
16 begins with, "The owner..." Would you read that
17 sentence, please?

18 A. Yes. "The owner of Baja Concrete is in
19 Miami but the (foreman/operations manager) is Chilean
20 and his name is Roberto Soto Contreras, he is leading
21 the operations here."

22 Q. Okay.

23 So is it correct then that -- would it be a
24 correct understanding of this interviewee's comment,
25 not -- not your comment but the interviewee's comment,

1 Q. And on what date was this interview on,
2 do you know?

3 A. Looks like February 19th, 2020.

4 Q. Do you recall whether this was done through
5 an interpreter?

6 A. I can't remember.

7 Q. Do you remember who that person was who you
8 were -- you and Ashley were interviewing?

9 A. No.

10 Q. Do you believe this is an accurate writing
11 of that interview and the responses to the interview
12 questions?

13 A. Yes.

14 Q. And, again, do we see information redacted
15 from this document?

16 A. Yes.

17 Q. And why was information redacted from this
18 document?

19 MR. MILLER: Objection to form of the
20 question; foundation.

21 Q. (By Mr. Larkin) Please answer anyway.

22 A. To hide the identity of workers who request
23 nondisclosure.

24 Q. Okay.

25 So looking at the first page of this

1 where I read the -- the blanks?

2 A. Yes.

3 Q. Okay.

4 So in looking at these, is this section a
5 recap of information that you believe was intained --
6 obtained from your investigation?

7 A. I believe so, yes.

8 Q. And this isn't a verbatim transcript of what
9 a witness told you?

10 A. I don't think so. I'm not a hundred percent
11 sure on that.

12 Q. And does this particular summary paragraph
13 state who the individual is that is reporting the
14 information to you?

15 A. I don't know.

16 Q. Okay.

17 But anywhere in this -- in this paragraph in
18 this -- in the unredacted portions does it state who
19 the individual is, their name, that is reporting this
20 information?

21 A. You mean the worker? Sorry.

22 Q. Yeah.

23 So what I'm asking is does this particular
24 paragraph identify the worker that was reporting this
25 information.

1 Q. So do you ask any of the witnesses that you
2 interviewed whether they actually observed or heard
3 somebody saying whatever it is that they're reporting
4 to you?

5 A. No. I don't think I do.

6 Q. And why don't you do that?

7 A. I just ask the question and they respond to
8 it. I don't ask them, "Did you hear something about
9 this? Was it hearsay?" I don't ask that kind of
10 question.

11 Q. Okay.

12 And if a witness did report to you whether
13 they actually observed something or whether they just
14 heard something, would that be something that you
15 would document in the interview notes?

16 A. Yeah.

17 Q. And do you ever ask them if what they're
18 reporting to you is just something that they believe
19 as opposed to something that they know to be true?

20 A. Depends on the certain circumstances, so --

21 Q. So what circumstances would you ask them
22 about that?

23 A. I can't think of one offhand right now
24 honestly. I'd have to take some time to think about
25 it. I can't think of it right now.

1 that pertains to their immigration status.

2 A. Yes.

3 Q. Okay.

4 And in this particular case it -- we've --
5 we've looked at I believe all eight of the witness
6 statements, but we looked at several. In any of the
7 interview statements that we've looked at can you
8 recall any information that would have been left out
9 of these particular interview notes?

10 A. I don't know.

11 Q. And would there have been any interviews
12 conducted with witnesses that are not documented in
13 the interview notes in this case?

14 A. Not to my knowledge.

15 Q. And you mentioned translators. If a
16 witness' first language isn't English, do you
17 typically provide them with a translator?

18 A. Well, it depends on request, so -- but if
19 they can't speak any English, so we find a translator,
20 so -- but if they can speak some English, we ask them
21 if they want a translator or not, so --

22 Q. Okay.

23 And if you had a translator, would that be
24 documented on the interview notes?

25 A. Sometimes it is.

1 Q. But not always?

2 A. Not always, yeah.

3 Q. And we looked at the interview notes that
4 were taken from the interview with Antonio Machado on
5 October 20th. Did you ever have any interviews with
6 Mr. Machado other -- other than that one interview?

7 A. That was the only one we had with him.

8 Q. Okay.

9 And do you know whether Mr. Machado's first
10 language is English?

11 A. I don't know.

12 Q. All right.

13 So we -- Mr. Larkin had asked you about the
14 final determination that was issued by the City of
15 Seattle in this particular case. Now, in -- in
16 talking about that final determination it involved
17 three different worksites -- one at Denny, one at
18 Terry, and one at Fairview -- is that correct?

19 A. Yeah.

20 Q. And did you find that the workers who were
21 paid by Baja Concrete worked at each of these three
22 worksites?

23 A. Not all of them.

24 Q. But -- and -- and I don't mean each
25 individual worker, but did workers paid by Baja

1 Did you ever handwrite any responses?

2 A. No.

3 Q. During the interviews that are conducted by
4 both you and Ashley Harrison would you both be taking
5 notes or just one of you would be?

6 A. Just the person who was -- one person's
7 questioning. One person's taking the notes. That's
8 it, so --

9 Q. Okay.

10 And so after the interview is done would you
11 and Ashley discuss the responses at all?

12 A. Yeah, we would discuss it.

13 Q. Did you ever adjust any of the responses
14 that you'd written down?

15 A. No. Might clean -- clean up grammar a
16 little bit, but that's about it, though.

17 Q. So you'd proofread your responses.

18 A. Yeah, for like any kind of like spellings
19 wrong, stuff like that.

20 Q. Okay.

21 And sometimes would you find some double
22 words, that sort of thing?

23 A. I can't remember if I have or not.

24 Q. Okay.

25 After the interviews did you ever send the

S I G N A T U R E

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the CHANGE SHEET flyleaf page hereof.

Signed in _____, Washington, this _____ day of _____, 2022.

DARON WILLIAMS

Taken: February 3, 2022

In Re: Baja Concrete, et al.
Hearing Examiner File No.: LS-21-002-004
Lauren G. Harty, RPR, CCR #2674

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of DARON WILLIAMS was taken before me on February 3, 2022, and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor a relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor am I financially interested in its outcome;

I further certify that in accordance with CR 30(e), the witness was given the opportunity to examine, read, and sign the deposition within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of February, 2022.

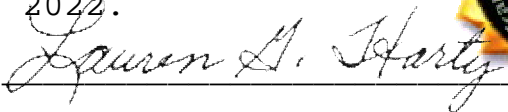

LAUREN G. HARTY, CCR #2674



EXHIBIT 5

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal)	
of:)	
)	No.: LS-21-002
)	LS-21-003
)	LS-21-004
BAJA CONCRETE USA CORP., ROBERTO)	
CONTRERAS, NEWWAY FORMING INC.,)	
and ANTONIO MACHADO,)	
)	

Videotaped Deposition Upon Oral Examination
of
ANTONIO MACHADO

Taken at Remotely via Zoom

DATE: Tuesday, February 1, 2022

REPORTED BY: Jamie Booker, RPR, CCR 3281

A P P E A R A N C E S

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Also Present: CLAUDIA PENUNURI

1 BY ERICA FRANKLIN:

2 Q. You can still go ahead and answer.

3 Maybe -- let me rephrase to be more clear.

4 Let -- let's just switch gears for a moment.

5 Let -- I have some questions for you about worker hiring.

6 How many -- how are people hired by Newway in
7 general? How -- can you just walk me through how worker
8 hiring works at Newway?

9 A. Sorry. Can you repeat?

10 Q. Sure. Can you please walk me through the hiring
11 process at Newway? How -- how do workers come on board?

12 A. How they -- how they -- I'll be honest with you.

13 I -- I never ever hire one of a Baja guys. And the hire
14 -- you know, Tom Grant will communicate with Roberto Soto,
15 you know, when he needs, you know, guys.

16 I didn't hire not even one person on that -- not
17 even my carpenter -- the carpenter that will come from the
18 union hall, I never did any hire then. Never, ever did
19 any hire them.

20 Q. Okay. Do you -- even if you weren't personally
21 involved, do you know how workers were hired to work at
22 the -- at 1120 Denny?

23 A. No. I don't know how they did get hired, no.

24 Like I said, my expertise was make sure, you know, we get
25 the job safe and done on time, you know, on schedule. I

1 next day."

2 Sometimes you get the flu. Sometimes you stay
3 two days, three days. You know, all depends on, you
4 know --

5 Q. If a --

6 A. All depend how bad it was.

7 Q. If a worker contacted you because they were
8 sick, did you have to check with their foreman? Or did
9 you have authority to just let them stay home?

10 A. No. We will communicate with the foreman. You
11 know, with the foreman we -- we will communicate. I said
12 oh, Joe or Mario or whatever, he called this morning. And
13 then I will tell him, "Oh, by the way, he called me too.
14 He told me, you know, he's very sick."

15 Q. Okay. And so the workers were calling -- Baja
16 workers who were paid by Baja, were -- would they ever
17 reach out to you directly if they needed --

18 A. No. Never.

19 Q. Okay. Were you aware if a Baja worker was --
20 was sick?

21 A. No.

22 Q. You just had no idea?

23 A. No. No idea, no. No.

24 Q. How were you able to -- to make sure the Baja
25 workers were getting the -- the right work done if you

1 A. Mr. Sosa? Who's --

2 Q. Mr. Soto. What were -- what were his duties --

3 A. Oh, so -- I don't know. To be honest, I don't
4 know. I'm not going to tell you things I -- I don't know.

5 Q. Do you know how his pay was determined?

6 A. How what? Sorry.

7 Q. Do you know how his pay was determined? Who --
8 who set Mr. Soto's pay?

9 A. How -- how Mr. Soto gets paid? I don't know. I
10 don't know anything.

11 Q. Okay. Just one moment.

12 So did you -- were you ever involved in firing
13 people on the -- on the site?

14 A. Never. I never ever fire one person. Never.

15 Q. Did you get involved in -- were workers fired
16 ever, to your knowledge, who --

17 A. I --

18 Q. -- worked at 1120 Denny?

19 A. I -- I don't -- I don't know. Roberto didn't
20 never mention -- one of the guys one time -- after all
21 this going on -- he was working for a window company.
22 And, you know, I'm going to tell you nothing but the
23 truth. He says -- and that -- he told me, so -- I asked
24 him, "So you don't work with Roberto? You work on the
25 windows?"

1 And he -- he told me, "Oh, Roberto told me you
2 don't want -- you don't want me on your job site. You
3 want -- you want -- you know, he wants me to get fired
4 because of you."

5 And I said, "No, that's not true." I never,
6 ever fired anybody, no.

7 Q. And were you involved behind the scenes in
8 decisions to fire people?

9 A. No. Never. Never.

10 Q. Were there any disciplinary actions taken that
11 weren't quite firing?

12 Did -- did workers ever just get in trouble, and
13 were they subject to discipline?

14 A. I don't know. Like I said, I -- I don't know
15 who was going on between the Roberto and the -- his
16 employee -- his employees or Baja employees. I don't -- I
17 don't have a clue. I don't know anything.

18 Q. Okay. Did you ever threaten to fire employees?

19 A. Never. Not even my -- I don't -- to be honest,
20 I don't have a -- the guts -- sorry -- if it's a -- guts
21 or the courage. That's the last thing I want to do is
22 anybody lose their job. This is, you know, from the
23 bottom of my heart. That's the last thing is fire
24 anybody.

25 Q. Okay. What about a Padro? Did he ever fire

1 Q. -- for the hours that were --

2 ALEX LARKIN: Object to the form. Object to the
3 form.

4 SARA KINCAID: I'll join that objection.

5 (Reporter clarification.)

6 BY ERICA FRANKLIN:

7 Q. Were they paid at a higher rate for the hours
8 that were beyond 40 in a workweek?

9 ALEX LARKIN: Object to the form.

10 SARA KINCAID: I'll join that objection.

11 BY ERICA FRANKLIN:

12 Q. You can answer, Mr. Machado.

13 A. I don't -- I don't have a clue. I don't know.

14 I never had a talk with Baja, you know, about their bus --
15 I don't know their business. I don't know anything.

16 Q. Okay.

17 A. And no one ever came to me and told me, "Tony, I
18 don't get paid for overtime or" -- no. Nobody ever came
19 to me so I -- I don't know anything about.

20 Q. Okay. Just one moment.

21 Okay. Let's -- let's turn next to the -- a
22 separate exhibit, the one that's marked B in the original
23 documents that I sent to you.

24 Okay. Mr. Machado, do you recognize this
25 document?

1 Q. Okay. So now I'm going to talk about employees
2 who are paid by Baja Concrete.

3 Were amounts ever deducted from their pay?

4 SARA KINCAID: I'm going to object to the form
5 of the question.

6 BY ERICA FRANKLIN:

7 Q. You can go ahead and answer.

8 A. You have to repeat again. Did Newway --

9 Q. Or -- for workers paid by Baja, were there ever
10 amounts of money taken out of their pay?

11 ALEX LARKIN: Object to the form of the
12 question.

13 BY ERICA FRANKLIN:

14 Q. You can still answer.

15 A. I don't know anything about Baja's business, how
16 they get paid, how much they were -- I don't know anything
17 about it. I -- I don't know anything.

18 Q. Okay.

19 ERICA FRANKLIN: Okay. Let's move on to -- to
20 exhibit -- the one that's marked E. And I'd like to mark
21 that as Exhibit 5, please.

22 (Deposition Exhibit 5 was marked for
23 identification.)

24 BY ERICA FRANKLIN:

25 Q. Have you seen this -- this document before,

A F F I D A V I T

I, ANTONIO MACHADO, hereby declare under penalty of perjury that I have read the foregoing deposition and that the testimony contained herein is a true and correct transcript of my testimony, noting the corrections attached.

ANTONIO MACHADO

Date: _____

[illegible]

That as a matter of firm policy, the stenographic notes of this transcript will be destroyed three years from the date appearing on this transcript, unless notice is received otherwise from any party or counsel on or before said date.

Jamie Booker, RPR, CCR
State of Washington CCR #3281
My CCR certification expires on 10/20/2022

To: SARA KINCAID
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Case Name: In the Appeal of Baja Concrete Corp, et al
Deposition of: Antonio Machado
Date Taken: 2/1/2022
Cause No.: LS-21-002, LS-21-003, LS-21-004
Court Reporter: Jamie Booker, RPR, CCR

This letter is to advise you of the following:

_____ Signature was reserved. The affidavit and correction sheet are being forwarded to you in electronic form. Please have the deponent review the transcript, note any corrections on the correction sheet, and return the signed affidavit and correction sheet to us within 30 days of this notice. According to Court Rule 30(e), the deposition affidavit should be signed within thirty (30) days or signature is considered waived.

_____ Signature was reserved. The transcript is ready for review and signature. Your office did not order a copy of the deposition transcript. Please contact our office to make an appointment for review. Signature must be completed within 30 days of this notice.

(Sent without signature to avoid delay)

Jamie Booker, RPR, CCR

EXHIBIT 6

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of:)
)
BAJA CONCRETE USA CORP., ROBERTO) Hearing Examiner File:
CONTRERAS, NEWWAY FORMING INC.,) No.: LS-21-002
And ANTONIO MACHADO) LS-21-003
) LS-21-004
From a Final Order of the Decision))
Issued by the Director, Seattle))
Office of Labor Standards))

VIDEOCONFERENCE DEPOSITION OF MERCEDES Z. DE ARMAS

May 11, 2022

Taken Remotely via Zoom

PREPARED BY: Michelle D. Elam, RPR, CCR 3335

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Also present: Claudia Penunuri

1 say "they," maybe I'm including Claudia and Roberto.

2 Q Okay. But he was inquiring about working -- you
3 working for Baja Concrete USA, not you as in you
4 Mercedes De Armas and/or Mercedes Accounting.

5 He wasn't inquiring about you working for Roberto
6 Contreras; right?

7 A He disclosed that he was going to be -- that there was
8 the agreement between the two companies. I remember
9 now he disclosed he's a partner. He's a partner on
10 the Ltd. company, he was a partner.

11 So -- and they were going to have -- they have
12 this project here in Washington, and then he was
13 asking about the payroll thing.

14 He did not hire me because he couldn't because he
15 had no authority for Baja Concrete USA. Claudia had,
16 and that's the reason Claudia is the one who hired me.
17 My contract is between Baja Concrete USA and Mercedes
18 Accounting.

19 Q Okay. So one of your -- you described one of your
20 duties as payroll?

21 A Yes.

22 Q Okay. And so who from Baja gave you the information
23 necessary for you to do that particular duty, to
24 process payroll?

25 A Well, it was Roberto Soto, but Roberto Soto is Baja

1 **Concrete Ltd.**

2 **This is a little bit confusing; right? It's Baja**

3 **Concrete Ltd. It was Roberto giving all of the**

4 **information for payroll.**

5 Q Okay. In order for you to process payroll, you got

6 the information from Roberto?

7 A **Yes.**

8 Q Okay. And did that information that was given to you

9 by Roberto, did it include the employees' hours

10 worked?

11 A **Yes.**

12 Q Now, in reviewing some of the items that were given to

13 OLS and that have been provided in discovery, I've

14 noticed that some of the pay stubs indicate that

15 workers were paid by the hour, by piece rate, and by

16 bonuses.

17 A **Correct.**

18 Q So how did you, either Mercedes De Armas or Mercedes

19 Accounting, how did you determine what each worker

20 should be paid for hours worked?

21 A **Roberto, in the payroll summaries, will give us all of**

22 the information. Who was piecework, who was hourly.

23 I recall at the beginning all of them, or most of

24 them, were by piecework because workers, apparently

25 they not wanting to work with a net paycheck and they

1 Q Okay. All right. So Roberto would give you the net
2 amount and then you would figure out, based on that,
3 what the bonus should be in order to cover taxes and
4 whatever else.

5 Am I saying that right?

6 A Well, you are just missing the part that Roberto was
7 the one who asked us to calculate the bonus because
8 that was the contract with the worker.

9 Q Okay. So, now, you said that your contact person was
10 Claudia.

11 A Yes.

12 Q Did you have contact with her with regard to payroll?

13 A Yes. In a sense, if she has any question, I will
14 answer the questions.

15 Q Was Claudia the one who was responsible for providing
16 time sheets or time cards for you -- to you?

17 A No. It was Roberto.

18 Q Okay. So you named Claudia as your contact person but
19 you got all of your payroll summaries and pay amounts
20 from Roberto?

21 A Yeah.

22 They are two different things. Roberto, to me,
23 is another -- is a subcontractor or a contractor or
24 whatever we want to call it, that has an agreement
25 with Baja Concrete USA. That's Roberto to me.

A F F I D A V I T

I, _____, hereby declare
under penalty of perjury that I have read the
foregoing deposition and that the testimony contained
herein is a true and correct transcript of my
testimony, noting the corrections attached.

Signature: _____ Date: _____

C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing deposition of Mercedes Z. De Armas was taken before me and completed on May 11, 2022, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Attorney Loran Staten Sylvester.

IN WITNESS WHEREOF, I have hereunto set my signature on the 18th day of May, 2022.

Michelle D. Elam

Michelle D. Elam, RPR, CCR
Certified Court Reporter 3335

B&A Litigation Services
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Date: May 18, 2022

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Case: In the Matter of the Appeal of: Baja Concrete
USA Corp., Roberto Contreras, Newway Forming
Inc., and Antonio Machado

Witness: Mercedes Z. De Armas
Cause No.: LS-21-002, LS-21-003, LS-21-004
Date Taken: May 11, 2022

The above transcript must be read and the
Correction Sheet signed within 30 days of this notice or
before the trial date. If the Correction Sheet is not
signed within that time period, signature will be deemed
waived for all purposes.

Please contact the witness and arrange a
convenient time and place for reading and signing.

After the Correction Sheet is signed, please mail
the signed original Correction Sheet to:

Lorna Staten Sylvester
Seattle City Attorney's Office
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Seattle, Washington 98104

Michelle D. Elam, RPR, CCR 3335

Cc: