

5/5/2022 Deposition Excerpts:
Newway Forming 30(b)(6)
Kwynne Forler-Grant

EXHIBIT A
TO DECLARATION OF CINDI WILLIAMS

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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

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<p style="text-align: right;">Page 6</p> <p>1 KWYNNE FORLER-GRANT, being duly sworn, testified 2 upon oath, as follows: 3 EXAMINATION 4 BY MR. LARKIN: 5 Q. So Ms. Grant, I'm Alex Larkin. I'm one of 6 the lawyers for Baja Concrete USA in this case. 7 Just a few basic ground rules for the 8 deposition. We have to be careful -- keep in mind 9 you're under oath so when responding to questions keep 10 that in mind. 11 We both need to be careful to avoid talking 12 over each other, even if it seems obvious what it's 13 going to be. When you're answering a question I have 14 to be careful not to talk over you and that's so the 15 court reporter can get a good clear transcript of 16 this. 17 Try to answer with a clear "Yes" or "No" 18 where appropriate rather than, you know, "Uh-huh" or 19 something like that. Again, so the record can be made 20 clear. 21 We can take breaks anytime except when there 22 is a question pending. So if I've asked a question 23 then you do need to respond to the question before 24 taking a break. But other than that, anytime you want 25 to take a break we can do that.</p>	<p style="text-align: right;">Page 7</p> <p>1 Let's see here. I'm supposed to ask this 2 question -- I don't like it -- but are you on any 3 medications or have any medical conditions that might 4 impair your ability to answer questions today? 5 A. No. 6 Q. Would you please provide your full name and 7 spell it. And your business address or work address. 8 A. Okay. It's Kwynne, K W Y N N E, Forler, F O 9 R L E R, hyphenated Grant, G R A N T. 133 164th 10 Street Southwest, Suite 204, Lynnwood, 98087. 11 Q. And have you ever been deposed before in a 12 civil case? 13 A. No. 14 Q. So what is your position or relationship 15 with Newway Forming, Inc.? 16 A. Senior manager. 17 Q. And how long have you been in that position? 18 A. I've moved up since receptionist, 22 years. 19 Q. You've been with the company for 27 years? 20 A. Twenty-two years, yes. 21 Q. How long have you been a senior manager? 22 A. Probably the last ten. 23 Q. Describe, if you would, your typical job 24 duties, just a summary. 25 A. Everything. Shipping back orders over the</p>
<p style="text-align: right;">Page 8</p> <p>1 border, moving equipment to the jobsites, trucking off 2 the jobsites. Oh, gosh. 3 All paperwork, insurance, workers comp, 4 everything. All the superintendents report to me, 5 call me when they need things. 6 Basically take care of the subcontractors on 7 the sites, anything they need. 8 Q. So are you familiar with the project jobsite 9 at 1120 Denny Way in Seattle? 10 A. Yes. 11 Q. Are you familiar with the project site at 12 707 Terry Avenue in Seattle? 13 A. Yes. 14 Q. And one more. Are you familiar with the 15 jobsite at 2014 Fairview Avenue in Seattle? 16 A. Yes. 17 Q. And you're generally familiar with or are 18 you familiar with the work that Baja Concrete USA, the 19 service they may have provided at those project sites? 20 A. Yes. 21 Q. We'll get into that a little bit more later. 22 And those three project sites, are those 23 projects all complete? As far as construction are 24 those properties complete? 25 A. Not 707 Terry.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. 2 A. Very close. 3 Q. But the other two are complete? 4 A. Yes. 5 Q. So a bit of an off-the-wall question, to 6 your knowledge has Newway Forming, Inc. ever been the 7 subject of a wage claim prior to this case? 8 A. No. 9 Q. So I'm going to introduce the first exhibit. 10 I'll share screen. Just give me a moment here. 11 (Marked Deposition Exhibit No. 1.) 12 Q. (By Mr. Larkin) Okay. Do you see this 13 document, Ms. Grant? 14 A. Yes. 15 Q. Have you seen this before? 16 A. Yes. 17 Q. I'll scroll through. It's four pages. 18 So on the third page where it says Exhibit A 19 and it lists items one through eight, have you read 20 over that list prior to this deposition? 21 A. Yes. 22 Q. Okay. Can you confirm that you are prepared 23 to answer questions about each of those topics that 24 are listed on this page of the document? 25 A. Yes.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. And do you see near the top of this page 2 where it lists those three project sites that we 3 already mentioned and that says the relevant time 4 period is February of 2018 through August of 2020? 5 Do you see that? 6 A. Yes. 7 Q. Okay. So for this deposition, and when 8 we're asking you questions about these items, we're 9 referring to that as the relevant time period. 10 Now we can move on to Exhibit 2. 11 (Marked Deposition Exhibit No. 2.) 12 Q. (By Mr. Larkin) I will introduce that. 13 Do you see this document? 14 A. Yes. 15 Q. And I think it's two pages or two separate 16 documents that are put together as one. So we're 17 looking at the first page and now the second page. 18 Back to the first page of Exhibit 1, what is 19 this document? 20 A. It's for the 1120 Denny Way project and it's 21 showing our staff. 22 Q. And it looks like it's titled "Newway 23 Organizational Chart," right? 24 A. Yes. 25 Q. So is this correct that, at least maybe</p>	<p style="text-align: right;">Page 11</p> <p>1 during the relevant period of time, this was Newway's 2 chart or an organization chart for that project site? 3 A. Yes. 4 Q. Now I'll just scroll down. There's a list 5 of -- well, let's start near the top. So Tom Grant, 6 Senior PM. 7 Where would you be on this organizational 8 chart? I don't see your name on it. 9 A. I'm on the organizational chart for the 10 company. I'm not on the jobsite. 11 Q. Okay. So for these three project sites, 12 well, primarily 1120 Denny Way, did you say you were 13 familiar with the project sites? 14 A. Yes. 15 Q. Did you visit them -- did you visit that 16 site or those sites, say, regularly when the work was 17 going on? 18 A. I used to in the beginning. 19 Q. Okay. So on this first page of Exhibit 2 20 can you say or are you able to say whether every name 21 that we see on here was a Newway employee? 22 A. Yes. 23 Q. Yes. Okay. 24 And I'll scroll down to page two of the same 25 exhibit. I guess this must just be a slightly</p>
<p style="text-align: right;">Page 12</p> <p>1 different period of time I guess for the same 2 organizational chart, is that correct? 3 A. Yes. It appears to be, yes. 4 Q. And again, all these names that we see on 5 page two, were all of those -- during the relevant 6 time period, at least, were all of those employees of 7 Newway Forming? 8 A. Yes. 9 Q. And here we see it looks like a president 10 and a vice president at the top of this chart, 11 correct? 12 A. Yes. 13 Q. Are those people still with the company? 14 A. Yes. 15 Q. Describe just briefly again, we see foreman. 16 Tony Machado was general foreman. Would you describe 17 just briefly what his duties would have been on this 18 1120 Denny Way project? 19 A. He would have oversaw everybody on that 20 list. 21 Q. Everybody that we see listed on this page? 22 A. Yes. 23 Q. Would he also oversee subcontractors, like 24 other employees there that were not Newway Forming 25 employees?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I think mostly they delegated that to the 2 leads. 3 Q. Okay. So the leads are the people we see a 4 little bit lower on the chart, right? 5 A. Uh-huh. Yes. 6 Q. If you don't mind, if you could just 7 describe again briefly what does a lead do. I see a 8 carpenter lead, finishing lead, laborer lead. 9 What do leads do? 10 A. They would go to the office in the mornings 11 and they would be instructed where their crews needed 12 to go throughout the building during that day. 13 Q. Okay. For each day would they also direct 14 subcontractors' employees? 15 A. We leave that up to the subcontractors and 16 their oversight staff, their superintendent. But they 17 do work closely with our leads because they do need to 18 know where their crew needs to be and those are 19 morning meetings every day. 20 Q. Okay. So those are morning meetings every 21 day. That's interesting. 22 So would these be morning meetings -- would 23 these be meetings of not only Newway Forming but would 24 you say Baja Concrete workers if they were there and 25 other subcontractors' employees, would they all be</p>

4 (Pages 10 to 13)

Page 18	Page 19
<p>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?</p>	<p>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.</p>
Page 20	Page 21
<p>1 Q. Let me scroll through the document because 2 this is 13 pages. We've got Newway Bates stamps on 3 here starting with 2078. 4 And some are upside down. That's how we 5 received them. 6 A. Yes. 7 MR. WANDLER: I promise we didn't do that on 8 purpose. 9 Q. (By Mr. Larkin) I'm scrolling through the 10 whole thing here. 11 It goes down to Bates stamp Newway 2090. 12 I'll scroll back to the top again. 13 So at the top of this, on page one of this 14 Exhibit 5, is that -- that's not an invoice, right? 15 That's a record of payment, right? 16 A. It is. I don't know -- I can't see the 17 invoice, so I'm not sure why the text is smaller but 18 that is one of their invoices, yes. 19 Q. Okay. But this other part of the same page 20 here would have been -- maybe it wasn't, maybe it was 21 related to a different invoice -- but it would have 22 been a record or was a record of Newway's payment to 23 Baja Concrete, right? 24 A. Yes. 25 Q. So again, just to be clear, the way this</p>	<p>1 would work in the overall system, Tom Grant and 2 Mr. Soto Contreras would get together, go through all 3 the timecards, group them, and Mr. Soto would prepare 4 these invoices. 5 So this invoice we see here likely was 6 prepared by Mr. Soto, correct? 7 A. Yes. 8 Q. And then who was responsible for paying the 9 invoices for Newway Forming? 10 A. In the beginning we sent everything to 11 Canada, B.C., FedEx. And then we did a course in 2019 12 in our Canadian office and started using their 13 software and checks were out of our Lynnwood office. 14 Q. So for the first, say, year and a half or 15 two years of these projects, the checks for Newway 16 Forming to Baja Concrete were actually coming out 17 of -- is it the Vancouver office? 18 A. Yes. 19 Q. Is that the headquarters of Newway Forming? 20 A. Yes. 21 Q. Okay. So looking at the second page of 22 Exhibit 5, it looks like maybe there's a match here, 23 the amount listed on the invoice and the amount of the 24 check stub there, is that correct? 25 A. Yes.</p>

6 (Pages 18 to 21)

Page 22	Page 23
<p>1 Q. And looking at that same page it looks like 2 we see some kind of approval down at the bottom of the 3 page. 4 A. Yes. 5 Q. Now is that Newway Forming's approval of 6 that invoice so it can be paid? 7 A. That's our in-house coding to be paid. 8 Q. Okay. And do you know whose initials or 9 signature that is on there? 10 A. Tom Grant. 11 Q. Okay. Scrolling down again. We're moving 12 right along today. 13 So tell me about Baja Concrete USA Coup. 14 Are you familiar with that business? 15 A. Yes. 16 Q. And how are you familiar with it? 17 A. They are a subcontractor of Newway Forming, 18 Inc. 19 Q. Well, so they were a subcontractor of Newway 20 Forming for the three project sites during the 21 relevant time period we've been talking about, 22 correct? 23 A. Yes. 24 Q. And how would you describe their scope of 25 services that they provided to Newway Forming on those</p>	<p>1 projects? 2 A. They were hired for cement finishing. 3 Q. And anything else? 4 A. Not until later. 5 Q. Later being beyond what we're calling the 6 relevant time period? 7 A. No, within the time period. 8 Q. Okay. So what else were they hired for 9 later during the time period? 10 A. Labor, laborers. 11 Q. Okay. But even when they were hired as 12 cement finishers, that's also a laborer, right? 13 A. General labor and cement finishing, cement 14 finishing is more of a skilled trade. 15 Q. Okay. 16 A. Patching, grinding. 17 Q. And roughly, if you can recall, how many 18 laborers were onsite -- let's just kind of focus on 19 the Denny Way project site. How many laborers 20 provided by Baja Concrete would typically be working 21 at that 1120 Denny Way site? 22 A. About the scope, I guess, six to twelve. 23 Q. Six to twelve pretty much every day that 24 work was going on? 25 A. It could have varied. It depends on the</p>
Page 24	Page 25
<p>1 needs of the site -- 2 Q. Okay. 3 A. -- where we were working. 4 Q. So how did Baja Concrete know how many 5 workers or laborers to send to the site on a daily 6 basis? 7 A. They would discuss that with Roberto. It 8 would probably be Tom Grant. 9 Q. Tom Grant would decide how many laborers, 10 how many cement finishers were needed today for this 11 work, something like that? 12 A. Yes. He was most familiar with the 13 schedule. 14 Q. And then he would inform -- just trying to 15 be consistent -- Mr. Roberto Soto, correct? 16 A. Yes. 17 Q. And then when the Baja Concrete laborers 18 would come to the worksite do you happen to know how 19 they arrived? Did someone give them a ride or did 20 they have their own transportation, do you recall? 21 A. I didn't find out until later but I guess 22 they came in a van. 23 Q. But that's something you learned later, not 24 during the relevant time period? 25 A. No. When the investigation began.</p>	<p>1 Q. Okay. So Baja Concrete laborers that worked 2 onsite, who would direct their actual work activities 3 day to day? 4 A. Our lead would go to Roberto and inform them 5 where they needed to be. 6 Q. I didn't quite catch it. Who would go to 7 Roberto? 8 A. Our lead. 9 Q. Okay. Gotcha. So Newway Forming's lead 10 would inform Roberto of how many laborers, how many 11 cement finishers they needed? 12 A. Yes. 13 Q. So then when the Baja Concrete laborers were 14 onsite at the project sites who would actually direct 15 their work? 16 A. They were in constant contact with Roberto. 17 I think everything pretty much went through him. 18 Q. To your memory, to your knowledge, did Tony 19 Machado direct the work of Baja Concrete? 20 A. Tony was way above, right? I don't think he 21 would do the lower end instructing. 22 Q. So who would decide when the laborers would 23 take a break or, you know, have their lunch? Who 24 would make those decisions? 25 A. Roberto would make the breaks and the lunch,</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 but on that particular jobsite I think it was pretty 2 standard that everybody took lunch at the same time 3 because of the food trucks. 4 Q. Okay. Because of the timing of when the 5 food trucks would come? 6 A. Yes. 7 Q. Can you describe any more -- we talked about 8 it some, but the overall business relationship between 9 Newway Forming and Baja Concrete USA? 10 A. Subcontractor. 11 Q. Baja Concrete being the subcontractor, 12 correct? 13 A. Yes. 14 Q. My next question may have been answered 15 already. Did Newway Forming report the laborers' 16 hours to Baja Concrete? 17 A. No. 18 Q. And is that because -- you described earlier 19 that Tom Grant would sit down with Roberto and they 20 would review and approve the hours and then 21 Mr. Roberto Soto would, I guess, prepare the invoices 22 to be issued by Baja Concrete to Newway Forming? 23 A. Yes. 24 Q. So other than those two sitting down weekly 25 or whenever it was to review all the timecards and</p>	<p style="text-align: right;">Page 27</p> <p>1 approve them, was there any other mechanism in place 2 for Newway Forming to report laborers' hours worked to 3 Baja Concrete? 4 A. I don't understand that. Can you repeat 5 that? 6 Q. Yes, sure. I'm trying to make sure we have 7 the whole picture. 8 So Tom Grant and Roberto Soto would sit down 9 weekly to review the timecards, approve them, and then 10 Mr. Soto would use the results of that approval 11 process to prepare Baja Concrete's invoices to Newway 12 Forming. 13 Was there any other process or mechanism in 14 place by which Newway Forming reported laborers' hours 15 to Baja Concrete? 16 A. No. 17 Q. Did Newway Forming and Baja Concrete agree, 18 say prior to the invoicing being done, did they agree 19 on what the hourly rates were going to be for the 20 workers? 21 And I don't mean their hourly wage yet I 22 mean the fee that Baja Concrete would charge Newway 23 Forming for those hours? 24 A. No. That was already negotiated before they 25 came down from the higher-ups.</p>
<p style="text-align: right;">Page 28</p> <p>1 Q. And who exactly would be responsible for 2 Newway Forming as far as those negotiations? 3 A. Joe Rigo in our Edmonton office and Carlos, 4 I can't pronounce his last name, Ibarra. 5 Q. Okay. But they were both -- if I understand 6 correctly, you're saying that the hourly rates that 7 Baja Concrete USA charged Newway Forming, Inc. for 8 these project sites in Seattle for labor, those hourly 9 rates were determined by people in Canada? 10 A. Yes. 11 Q. By the people you named? 12 A. Yes. 13 Q. Let me -- I'm still sharing screen. I'll 14 pull up the next exhibit which is Exhibit 6. 15 (Marked Deposition Exhibit No. 6.) 16 Q. (By Mr. Larkin) Again, we're kind of going 17 out of order here if that's okay. 18 I'll scroll through this. It's 16 pages. 19 It's got some Seattle Bates stamps on them but the 20 numbers got cut off a little bit. 21 I'm scrolling through still. There's some 22 handwritten page numbers in the lower right corner, so 23 I'm on 65, 66, 67, 68, 69, 70, on down to page 74. 24 I'll scroll back up. 25 Do you recognize what this document is?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes, I do. 2 Q. What is this document? 3 A. The stand-down site safety. A load was lost 4 and replacing them. 5 MR. WANDLER: I'm going to for the record 6 object as being outside the scope of the 30(b)(6) 7 issues. 8 And I only do that -- and it's okay if 9 Kwynne testifies. I only do that because this may be 10 more from personal knowledge than as a representative 11 of Newway, that she didn't really go back through and 12 look at this issue. 13 And as a 30(b)(6) deponent I want to caution 14 that this may be personal knowledge and not the 15 company's knowledge. There may be more out there. 16 MR. LARKIN: Okay. 17 MR. WANDLER: But you can go ahead. 18 Q. (By Mr. Larkin) So again -- okay, I don't 19 really want to ask about whatever this accident or 20 incident may have been. I'm just asking about this 21 group of documents, what was it used for. 22 I'll scroll down a few pages to where it's 23 more useful today for us. The page that's hand 24 labeled or hand marked as page 63 in the lower right 25 corner, what is this again and what would this be used</p>

<p style="text-align: right;">Page 34</p> <p>1 time period, shouldn't we expect to see Baja Concrete</p> <p>2 listed as the company for some of those dates?</p> <p>3 MR. WANDLER: I'm going to object. It</p> <p>4 assumes facts not in evidence. We can't see all those</p> <p>5 sign-in sheets so we don't know if they signed in as</p> <p>6 Baja.</p> <p>7 But you can go ahead and answer.</p> <p>8 A. They should have signed in as Baja for the</p> <p>9 weekly safety meetings. I don't know why they were</p> <p>10 signing in as Newway. I had two verbal conversations</p> <p>11 with Roberto and three emails questioning this.</p> <p>12 Q. (By Mr. Larkin) Okay. Does Newway Forming,</p> <p>13 you know, whether it's maintained here or in Canada,</p> <p>14 do they have these sign-in sheets stored somewhere for</p> <p>15 other meetings, whether it's a safety --</p> <p>16 A. Yes.</p> <p>17 Q. Sorry. Go ahead.</p> <p>18 A. Yes, we do.</p> <p>19 Q. Where are they stored?</p> <p>20 A. 1133 Lynnwood office.</p> <p>21 Q. Here in Lynnwood, Washington?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 MR. LARKIN: I'm sure we requested these in</p> <p>25 discovery and I don't recall seeing more than what</p>	<p style="text-align: right;">Page 35</p> <p>1 we've just looked at here.</p> <p>2 MR. WANDLER: I believe that they all have</p> <p>3 been produced and I believe the email I sent you last</p> <p>4 week directing you to where those are will show you</p> <p>5 where those are at.</p> <p>6 MR. LARKIN: Thanks, Jason. I'll take</p> <p>7 another look at that.</p> <p>8 MR. WANDLER: And just a heads up, I think</p> <p>9 they're scattered throughout a bunch of documents</p> <p>10 because they're attached to different documents and</p> <p>11 stuff so it's a little convoluted finding them.</p> <p>12 MR. LARKIN: All right. I'm going to move</p> <p>13 on to Exhibit 7.</p> <p>14 (Marked Deposition Exhibit No. 7.)</p> <p>15 Q. (By Mr. Larkin) Again, it's in a goofy</p> <p>16 order but do you recognize this document?</p> <p>17 A. Yes.</p> <p>18 Q. What is this document?</p> <p>19 A. This is Baja's billing backup, their</p> <p>20 invoice.</p> <p>21 Q. Would this have been prepared by Mr. Roberto</p> <p>22 Soto?</p> <p>23 A. Yes.</p> <p>24 Q. And that would have been prepared, as you've</p> <p>25 testified earlier, based on the meetings between Tom</p>
<p style="text-align: right;">Page 36</p> <p>1 Grant and Roberto Soto, correct?</p> <p>2 A. I don't know if it was so much the hours or</p> <p>3 we were questioning the people. And that's why they</p> <p>4 started going through these invoices a little more</p> <p>5 stringently.</p> <p>6 Q. Let me scroll through this first before I</p> <p>7 ask any more. It's about four pages. Newway</p> <p>8 Bates stamp 2158, I think that is, 2159. Yeah, 22 --</p> <p>9 2213, sorry. 2195.</p> <p>10 Would you look at the third page of this</p> <p>11 Exhibit 7. It looks like there's a signature at the</p> <p>12 bottom.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Whose signature is that, if you know?</p> <p>16 A. No, I do not recognize that signature.</p> <p>17 Q. And again, this document, if I understood</p> <p>18 correctly, is a summary of laborers and how many hours</p> <p>19 were reported to have been worked on different days of</p> <p>20 the week, right?</p> <p>21 A. Uh-huh. Yes.</p> <p>22 Q. Thank you. And you just said a moment ago</p> <p>23 something interesting.</p> <p>24 At some point Newway was questioning the</p> <p>25 workers as opposed to hours, am I right?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Employees, yes.</p> <p>2 Q. What do you mean by that? What was Newway</p> <p>3 Forming questioning?</p> <p>4 A. Tom Grant was questioning "How do I know</p> <p>5 who's onsite?" It's actually two twin towers, 44</p> <p>6 floors. "So how do I know who's actually here?" That</p> <p>7 was when he started.</p> <p>8 And so we asked Roberto Soto for a list of</p> <p>9 his employees, and I noticed right off the bat that we</p> <p>10 were missing at least three and questioned him on it.</p> <p>11 Q. Okay. Meaning for at least three employees</p> <p>12 or workers you're saying that names were appearing on</p> <p>13 these summaries for which you did not have timecards,</p> <p>14 is that correct?</p> <p>15 A. This was earlier on. The timecards weren't</p> <p>16 in the picture, I think, until Tom took over in mid</p> <p>17 2019. This is from 2018.</p> <p>18 Q. So prior to the timecards, gosh, how would</p> <p>19 you have verified whether each of these people on</p> <p>20 these summaries had actually been onsite on the days</p> <p>21 recorded? How would you have done that?</p> <p>22 A. I would say that up until about mid 2019</p> <p>23 until Tom Grant took over I don't think these were</p> <p>24 looked at closely.</p> <p>25 Q. Okay. So it wasn't until the company</p>

<p style="text-align: right;">Page 38</p> <p>1 started using the time clock -- that was the moment in</p> <p>2 time, I guess, or point in time where the company</p> <p>3 began to verify whether each of the employees were</p> <p>4 actually onsite, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Scrolling down to the last page of this</p> <p>7 Exhibit 7, is this also -- it's kind of hard to see</p> <p>8 but do you recognize this as also being a shorter</p> <p>9 summary of hours?</p> <p>10 A. I don't -- it looks like maybe a</p> <p>11 supplemental form, maybe somebody they missed or</p> <p>12 something. I'm not sure why there would just be one.</p> <p>13 Q. Do you recognize who apparently signed it at</p> <p>14 the bottom?</p> <p>15 A. I don't recognize the top signature but the</p> <p>16 superintendent at the time was Craig Kuchel.</p> <p>17 Q. Okay. The superintendent employed by Newway</p> <p>18 Forming, correct?</p> <p>19 A. Yes.</p> <p>20 Q. At the top of this page, the fourth page of</p> <p>21 Exhibit 7, clearly it says "Baja Concrete USA</p> <p>22 Timesheet," right?</p> <p>23 A. Yes. It looks like something might have</p> <p>24 been supplemented; maybe they missed billing us for</p> <p>25 somebody. This doesn't look right with just one</p>	<p style="text-align: right;">Page 39</p> <p>1 person on it.</p> <p>2 Q. Okay.</p> <p>3 A. It may be why Craig had to approve it.</p> <p>4 Q. Okay. I'll pull up Exhibit 8.</p> <p>5 (Marked Deposition Exhibit No. 8.)</p> <p>6 Q. (By Mr. Larkin) It looks like this is just</p> <p>7 one page, Exhibit 8.</p> <p>8 Do you recognize this document?</p> <p>9 A. Yes.</p> <p>10 Q. That was "Yes"?</p> <p>11 A. Yes.</p> <p>12 Q. I'm sorry. And again, I think we've seen</p> <p>13 some before but describe what this document is.</p> <p>14 A. This is Baja's billing to Newway.</p> <p>15 Q. Okay. And for this particular -- again,</p> <p>16 this is only a one-page exhibit -- on this particular</p> <p>17 invoice it looks like it relates to the 1120 Denny Way</p> <p>18 project, correct?</p> <p>19 A. Yes.</p> <p>20 Q. So the date -- there's a couple different</p> <p>21 dates but it looks like May 26, 2020, correct?</p> <p>22 A. Uh-huh. Yes.</p> <p>23 Q. Again, this would have been a summary --</p> <p>24 well, based on the summary of hours prepared by or</p> <p>25 agreed to between Tom Grant and Roberto Soto, correct?</p>
<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. And approved -- it looks like, again,</p> <p>3 there's a kind of stamp here in the middle of the</p> <p>4 page. There's an approval there, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that's Newway Forming's approval so that</p> <p>7 it will pay that invoice, correct?</p> <p>8 A. Yes.</p> <p>9 Q. I'm going to stop the share screen. I don't</p> <p>10 think I need Exhibit 9.</p> <p>11 What was Exhibit 9? Since we have it let's</p> <p>12 just take a quick look at Exhibit 9.</p> <p>13 (Marked Deposition Exhibit No. 9.)</p> <p>14 Q. (By Mr. Larkin) I'll scroll through it.</p> <p>15 Let's go back to the first page of</p> <p>16 Exhibit 9. Do you recognize this document?</p> <p>17 A. Yes.</p> <p>18 MR. WANDLER: Just to interject, I'm going</p> <p>19 to object again on the grounds this is outside the</p> <p>20 scope of the 30(b)(6).</p> <p>21 You can certainly answer questions, but I</p> <p>22 just want everybody to be aware this may be personal</p> <p>23 knowledge and not actually the knowledge of the</p> <p>24 company.</p> <p>25 MR. LARKIN: Okay.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. (By Mr. Larkin) So on page one of this</p> <p>2 Exhibit 9, what is this letter? What's your</p> <p>3 understanding of what this is, this document?</p> <p>4 A. This is when the City brought up this</p> <p>5 investigation.</p> <p>6 Q. Okay. And is it correct that this letter --</p> <p>7 I'll click the first page of this document which is</p> <p>8 the beginning of a letter and it's addressed to</p> <p>9 several individuals but also to Newway Forming, Inc.,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. I guess just based on your knowledge, why</p> <p>13 would the City -- well, again, I'm not being very</p> <p>14 careful here. So let me scroll down to the third page</p> <p>15 of this exhibit which has a title of it or a section</p> <p>16 of it called "Notice of Investigation," correct?</p> <p>17 A. Yes.</p> <p>18 Q. So is it your understanding that this was</p> <p>19 the City of Seattle's notice to all of the parties</p> <p>20 listed at the top of page three that it was</p> <p>21 undertaking an investigation in this matter?</p> <p>22 A. Yes.</p> <p>23 Q. And then scrolling down to the next page,</p> <p>24 the fourth page, do you see a section titled "Initial</p> <p>25 Request for Information"?</p>

<p style="text-align: right;">Page 46</p> <p>1 Newway Forming, since this is a 30(b)(6) deposition 2 and you're speaking on behalf of the company. 3 A. You'll have to clarify that. 4 Q. Oh, that was more just ground rules, not a 5 question. 6 But when I say "you" I'm referring not to 7 you personally but to Newway Forming. 8 A. I understand. 9 Q. Okay. And I know this 30(b)(6) deposition 10 is kind of weird, it's not intuitive. 11 So I want to talk about Baja's business 12 relationship with Newway Forming. Can you please tell 13 me about that business relationship. 14 A. Baja is a subcontractor of Newway Forming. 15 Q. Did Baja and Newway have a formal business 16 relationship? 17 A. Can you elaborate? 18 Q. Was there a formal agreement that Baja would 19 serve as a subcontractor for Newway? 20 A. No. 21 Q. And I think you said before there were no 22 contracts whatsoever between -- written contracts 23 between Baja and Newway, correct? 24 A. Yes. 25 Q. Did Baja provide any service to Newway</p>	<p style="text-align: right;">Page 47</p> <p>1 during the relevant time period? 2 A. Yes. 3 Q. And what service was that? 4 A. Cement finishing. 5 Q. Any other services? 6 A. Labor. 7 Q. Okay. Anything else? 8 A. No. 9 Q. When you say "labor" what do you mean by 10 that? 11 A. Labor work. 12 Q. Did Baja provide people to do work for 13 Newway? 14 A. Yes. 15 Q. And when did the relationship between Baja 16 Concrete and Newway begin? 17 A. Well, they'd worked together in Edmonton and 18 Calgary, Alberta prior to them coming down here. 19 Q. Do you know when they first began working 20 together in Canada? 21 A. No, I don't. 22 Q. And do you know how the relationship between 23 Newway and Baja came about? 24 A. From Canada, no, I don't. 25 Q. So you said that there was no written</p>
<p style="text-align: right;">Page 48</p> <p>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.</p>	<p style="text-align: right;">Page 49</p> <p>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?</p>

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<p>1 A. No.</p> <p>2 Q. Okay. Can you tell me about the</p> <p>3 relationship between -- the personal relationship</p> <p>4 between Carlos and Tony, please?</p> <p>5 MR. LARKIN: I'll object based on I believe</p> <p>6 this is outside the scope of the 30(b)(6).</p> <p>7 MS. KINCAID: Join.</p> <p>8 Q. (By Ms. Franklin) You can still answer.</p> <p>9 I'll repeat my question.</p> <p>10 Can you tell me about the nature of the</p> <p>11 relationship between Carlos and Tony?</p> <p>12 A. I believe friends for 30 years.</p> <p>13 MR. LARKIN: Same objection.</p> <p>14 And can I just have a standing objection,</p> <p>15 Erica, to any questions about these personal</p> <p>16 relationships among the various people?</p> <p>17 MS. FRANKLIN: Yes, thank you.</p> <p>18 MS. KINCAID: And I'll join the standing</p> <p>19 objection.</p> <p>20 Q. (By Ms. Franklin) You mentioned that Joe</p> <p>21 Rigo at Newway and Carlos Ibarra came up with the</p> <p>22 hourly rate that Newway would pay Baja for labor, is</p> <p>23 that correct?</p> <p>24 A. I believe they asked for a PeopleReady</p> <p>25 invoice, another subcontractor, and based on</p>	<p>1 information on those hourly rates.</p> <p>2 Q. So who is PeopleReady? I'm sorry.</p> <p>3 A. It was our previous skilled trade labor</p> <p>4 company, subcontractor.</p> <p>5 Q. So what you're saying is that Newway, Joe</p> <p>6 Rigo and Carlos agreed to use the same rates that</p> <p>7 Newway was previously paying to PeopleReady?</p> <p>8 A. Carlos presented it and Joe approved it</p> <p>9 based on knowledge of that rate.</p> <p>10 Q. Okay. Was that interaction in person or in</p> <p>11 writing?</p> <p>12 A. Not in writing.</p> <p>13 Q. Okay. Can you describe Newway's</p> <p>14 relationship with Roberto Soto Contreras, please.</p> <p>15 A. He's the subcontractor foreman, a</p> <p>16 superintendent.</p> <p>17 Q. At any point in time has anyone at Newway</p> <p>18 had a personal relationship with Mr. Soto?</p> <p>19 MR. LARKIN: Again, the same standing</p> <p>20 objection.</p> <p>21 MS. FRANKLIN: Right.</p> <p>22 Q. (By Ms. Franklin) You can still answer the</p> <p>23 question.</p> <p>24 A. No.</p> <p>25 Q. Is anyone at Newway still in touch with</p>
Page 52	Page 53
<p>1 Mr. Soto at this point in time?</p> <p>2 A. Not that I'm aware of, no.</p> <p>3 Q. Okay. So you mentioned that Baja provided</p> <p>4 workers to Newway. Did Baja do so at Newway's</p> <p>5 direction?</p> <p>6 MR. WANDLER: I'm going to object to the</p> <p>7 form of the question but you can go ahead and answer.</p> <p>8 A. Would you repeat that?</p> <p>9 Q. (By Ms. Franklin) I'm happy to rephrase.</p> <p>10 Did Newway ask Baja to provide workers?</p> <p>11 MR. WANDLER: Are you asking for like a</p> <p>12 specific number of workers or people to cover a</p> <p>13 specific scope of work? I think that is the confusion</p> <p>14 on our end.</p> <p>15 Q. (By Ms. Franklin) Let me break it up.</p> <p>16 I guess I'll ask my first question first.</p> <p>17 Did Newway ask Baja to provide workers for a specific</p> <p>18 scope of work?</p> <p>19 A. I guess they would have advised Roberto for</p> <p>20 cement finishing duties for that project.</p> <p>21 Q. Did Newway ask Baja to provide a specific</p> <p>22 number of employees?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. How did Newway make this request to Baja to</p> <p>25 provide workers for a certain scope of work?</p>	<p>1 A. Through Roberto Soto.</p> <p>2 Q. And was that a verbal request?</p> <p>3 A. A phone call, yes.</p> <p>4 Q. Okay. And so was this a one-time occurrence</p> <p>5 that Newway requested that Baja provide workers for</p> <p>6 these specific tasks or did Newway make this request</p> <p>7 on an ongoing basis?</p> <p>8 A. Ongoing basis.</p> <p>9 Q. Okay. And did that take place throughout</p> <p>10 the relevant time period, February 2018 through August</p> <p>11 of 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And did Newway inform Roberto how</p> <p>14 many workers he would need at different points in that</p> <p>15 relevant period?</p> <p>16 MR. WANDLER: Objection; asked and answered.</p> <p>17 You can go ahead and answer.</p> <p>18 A. Yes.</p> <p>19 Q. (By Ms. Franklin) Okay. So did workers at</p> <p>20 the relevant worksites who were on Baja's payroll take</p> <p>21 home the same amount of pay as workers on the relevant</p> <p>22 worksites who were not on Baja's payroll?</p> <p>23 A. I don't have any knowledge of their</p> <p>24 payments.</p> <p>25 Q. Was there any sort of relationship between</p>

<p style="text-align: right;">Page 54</p> <p>1 Tony Machado and Roberto Soto by which money was 2 flowing out between those two individuals? 3 MS. KINCAID: I'll object to the form of the 4 question as outside the scope of the 30(b)(6). 5 MR. WANDLER: Join in that objection. 6 MR. LARKIN: Join the objection. 7 MR. WANDLER: And it's already been asked 8 and answered. 9 Q. (By Ms. Franklin) You can still answer that 10 one. 11 Was there a relationship with money flowing 12 between Tony Machado and Roberto Soto? 13 A. No. 14 Q. Okay. You mentioned that after the first 15 year and a half of the project Newway started tracking 16 time for the workers on Baja's payroll, correct? 17 A. Yes. 18 Q. And can you just tell me approximately what 19 date that was, like when was the year and a half? 20 A. September 2019. 21 Q. So I want to know more about something you 22 said before about Newway started tracking time because 23 it needed to ensure that the people on the timesheets 24 were actually working on the site, is that correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. And when did Newway first become aware that 2 there might be people listed who weren't on the site? 3 A. I don't think that's where it started. It 4 was just some irregularities that started showing up 5 and that's when it was decided to ask Roberto Soto his 6 list of employees. 7 And then when we cross-referenced the bills 8 and people that we were getting billed for they were 9 not on his list. 10 Q. Okay. And when you said irregularities, can 11 you tell me what those irregularities were? 12 A. Somebody working two days and then leaving 13 and the card was whited out and handed to another 14 employee. 15 Q. And how much time passed between when you 16 became aware of the irregularities and when you 17 started tracking time yourself for Newway? 18 A. A couple weeks. 19 Q. Were there any other irregularities? 20 A. Gosh, I can't remember if -- there was 21 three. I apologize. 22 Q. That's okay. 23 A. People that were on the timesheet and the 24 employees that were unaccounted for, and I knew about 25 one. That's how I caught it because this employee of</p>
<p style="text-align: right;">Page 56</p> <p>1 Baja was injured and Roberto took him to the doctor. 2 And they recorded that he worked for Newway which was 3 an untruth. 4 So they sent me -- L&I sent me this incident 5 report and I went "Well, where is this guy on your 6 list of employees that you've been billing us for 7 him?" 8 So just those kind of questions we started 9 having. 10 Q. Okay. Beyond tracking hours itself, did 11 Newway do anything else to, I guess, to keep a closer 12 eye on Roberto after you identified these initial 13 irregularities? 14 A. That's why they started going through the 15 timesheets together. It wasn't the hours, it was Tom 16 wanted to know who was onsite when. 17 And he thought by asking our office to 18 provide the time clock we had was to make sure 19 physically they were clocking in and clocking out in 20 our office. 21 Q. Okay. Just to clarify, when they were 22 clocking in and clocking out could Newway see how many 23 hours that a given worker was working from those 24 records? 25 A. It would be my guess at the end of the week</p>	<p style="text-align: right;">Page 57</p> <p>1 Roberto and Tom Grant. 2 Q. So maybe I can just ask the question a 3 little differently. 4 So did Newway -- once it started tracking 5 hours of workers on Baja's payroll, did Newway have 6 its own records showing how many hours each worker 7 worked? 8 A. I see what you're saying. No. 9 Q. But wouldn't the time clock records show 10 that information? 11 A. It's just a manual that you put in there and 12 it punches it. And then they go off the cards but the 13 cards pretty much stayed down on the site. 14 Q. I'm sorry. They stayed where? 15 A. Down onsite. 16 Q. And what does that mean? 17 A. The jobsite. 18 Q. Oh, okay. So from the timecards did that 19 show how much a given worker was working? 20 A. Yes. They would punch in and punch out. 21 Q. Did workers who were working on Baja 22 Concrete's payroll use the same punch in/punch out 23 procedure as other workers working on the Newway 24 sites? 25 A. On Newway, are you asking specifically how</p>

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<p>1 Newway employees?</p> <p>2 Q. Yes.</p> <p>3 A. Newway employees we use a third party and</p> <p>4 they clock in and out on their phones.</p> <p>5 Q. So was the clock, the time clock, was that</p> <p>6 just for the employees on Baja's payroll?</p> <p>7 A. Yes.</p> <p>8 Q. And what about the timecards?</p> <p>9 A. Yes.</p> <p>10 Q. What about for other subcontractors? Did</p> <p>11 Newway keep track of their time?</p> <p>12 A. We didn't have any irregularities that we</p> <p>13 caught and no.</p> <p>14 Q. So when Tom Grant would sit down with</p> <p>15 Roberto to give him information so Roberto could make</p> <p>16 the invoices, what information did Tom Grant provide</p> <p>17 to Roberto?</p> <p>18 A. Roberto already came with his own</p> <p>19 information. I think that was reported back offsite.</p> <p>20 I don't think there was ever really a</p> <p>21 question about the hours, it was just the people.</p> <p>22 Q. How did Baja know -- how did Newway know</p> <p>23 that there was no question about the hours if it</p> <p>24 wasn't checking the hours?</p> <p>25 A. Would you rephrase, say that again?</p>	<p>1 Q. So you just stated that there was never</p> <p>2 really any question as to whether the hours that Baja</p> <p>3 reported were correct, right?</p> <p>4 A. Yes.</p> <p>5 Q. But did you also state that Newway was not</p> <p>6 independently tracking the hours of workers on Baja's</p> <p>7 payroll?</p> <p>8 A. No. Not independently, no.</p> <p>9 Q. So if Newway was not independently tracking</p> <p>10 that how did Newway know that the hours that Roberto</p> <p>11 was reporting were correct?</p> <p>12 A. Once Tom and he, Roberto, went through it</p> <p>13 the billing was submitted. And there was no questions</p> <p>14 once Tom and he reviewed it.</p> <p>15 Q. So tell me about the scope of that review.</p> <p>16 What exactly were he and Tom reviewing together?</p> <p>17 A. The timecards and the people.</p> <p>18 Q. Did Tom and Roberto use the timecards to</p> <p>19 verify that the number of hours on the Baja invoices</p> <p>20 were correct?</p> <p>21 A. Roberto typically had his own information.</p> <p>22 We just used -- we just used that, I think, to</p> <p>23 cross-reference. They could have had an issue with</p> <p>24 some hours here and there. That wasn't the</p> <p>25 implementation, the reasoning for the time clock.</p>
Page 60	Page 61
<p>1 Q. So if Roberto had a problem he wasn't sure</p> <p>2 exactly how many hours were used, were worked by his</p> <p>3 workers, could he look to Newway's time clock or</p> <p>4 timecard references to check?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So Newway did maintain records, its</p> <p>7 own records that you could check against of how many</p> <p>8 hours people worked?</p> <p>9 A. I mean -- I don't know. I guess I don't</p> <p>10 understand the question.</p> <p>11 Q. So I would assume that if Roberto was able</p> <p>12 to use Newway's timecards and time clock records to</p> <p>13 check how many hours a given worker worked, then those</p> <p>14 time clock and timecard hours in fact showed how many</p> <p>15 hours workers worked, is that correct?</p> <p>16 MR. WANDLER: I'm going to object. It</p> <p>17 mischaracterized the testimony as to what Roberto was</p> <p>18 using the time cards for.</p> <p>19 Q. (By Ms. Franklin) Okay. Maybe we should</p> <p>20 back up a step.</p> <p>21 What was Roberto using the timecards for?</p> <p>22 A. He wasn't using the time -- he always had</p> <p>23 his own billings, this whole time he had his own</p> <p>24 billings. He was keeping track somehow. And that's a</p> <p>25 question for them. I don't know.</p>	<p>1 Q. But you mentioned before that Roberto and</p> <p>2 Tom would look at the time clock and timecard records</p> <p>3 in going over things, right?</p> <p>4 A. After Roberto would bring down his invoices</p> <p>5 then Tom would -- they would cross-reference and make</p> <p>6 sure they matched what we had. But he's always kept</p> <p>7 his own records.</p> <p>8 Q. Okay.</p> <p>9 A. How they got that information I don't know.</p> <p>10 That's a question for them.</p> <p>11 Q. When Baja submitted timesheets with its</p> <p>12 invoices, did somebody at Newway sign off on those</p> <p>13 timesheets?</p> <p>14 A. Every superintendent has to sign off on</p> <p>15 invoices or they won't be paid. We have to approve</p> <p>16 those.</p> <p>17 Q. And what does the superintendent do to</p> <p>18 determine whether or not to sign off?</p> <p>19 A. Peruses them. I don't know how they get</p> <p>20 into them.</p> <p>21 Q. Do they check the hours against Newway's own</p> <p>22 records of worker hours?</p> <p>23 A. We didn't keep track of their hours other</p> <p>24 than these time clock sheets that -- you know, Roberto</p> <p>25 would do his invoice and Tom would just cross</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 reference the people.</p> <p>2 Other than that, we don't do that. It's up</p> <p>3 to the subcontractors to keep track of their hours.</p> <p>4 Q. So when a person punches in and out on a</p> <p>5 time clock, just generically what information is</p> <p>6 available from the time clock?</p> <p>7 A. For our employees or are you talking</p> <p>8 about --</p> <p>9 Q. Just in general, a person using the time</p> <p>10 clock that Newway brought into its office.</p> <p>11 A. Oh, just the time clock. Would you ask your</p> <p>12 question again?</p> <p>13 Q. What does that show -- when a person uses</p> <p>14 the time clock what information does the time clock</p> <p>15 sort of set out?</p> <p>16 A. Just in and out.</p> <p>17 Q. Okay. If a person takes a break in the</p> <p>18 middle of the day do they clock out or do they only</p> <p>19 clock out at the end of the day?</p> <p>20 A. End of the day.</p> <p>21 Q. Okay. I want to talk a little bit more</p> <p>22 about the invoices from Baja.</p> <p>23 Can you walk me through the process, please,</p> <p>24 from start to finish, from receiving, reviewing and</p> <p>25 paying invoices from Baja.</p>	<p style="text-align: right;">Page 63</p> <p>1 A. Roberto would go to Staples and he'd scan</p> <p>2 the invoices via email to myself and Nick Cheesa.</p> <p>3 And he had slots for each superintendent.</p> <p>4 He puts those invoices in there. When they come in</p> <p>5 weekly they go through all the invoices and they</p> <p>6 approve them.</p> <p>7 Q. Did Newway always pay Baja the full amount</p> <p>8 that Baja invoiced for?</p> <p>9 A. Not always.</p> <p>10 Q. When would Newway pay less than the amount</p> <p>11 invoiced for?</p> <p>12 A. Things that were being charged for their</p> <p>13 employees to us.</p> <p>14 Q. Can you give me an example?</p> <p>15 A. The tests.</p> <p>16 Q. Okay. Can you give me some -- tell me some</p> <p>17 examples, please.</p> <p>18 A. Scissor lift safety courses that weren't the</p> <p>19 norm.</p> <p>20 Q. So you're saying Baja billed Newway for</p> <p>21 that, for those items that Newway did not reimburse</p> <p>22 Baja?</p> <p>23 A. We had a third party safety company down on</p> <p>24 1120 Denny. They didn't know the difference, and if</p> <p>25 somebody came in and said "I need a scissor lift</p>
<p style="text-align: right;">Page 64</p> <p>1 course," I found that they were giving them to some of</p> <p>2 Baja's employees. And per the owner they were to pay</p> <p>3 for their own.</p> <p>4 But we paid the bill and we took it off</p> <p>5 their invoice with Roberto's approval.</p> <p>6 Q. Okay. Besides situations like that where</p> <p>7 they put something on the invoice, an item that Newway</p> <p>8 was not supposed to pay, were there other situations</p> <p>9 where Newway would not pay the full amount of a Baja</p> <p>10 invoice?</p> <p>11 A. No.</p> <p>12 Q. Did Newway ever dispute the number of hours</p> <p>13 submitted on a timesheet?</p> <p>14 A. I don't remember any time ever, no.</p> <p>15 Q. Did Newway ever dispute the rate submitted</p> <p>16 on a timesheet?</p> <p>17 A. No, that was already in stone.</p> <p>18 Q. To Newway's knowledge were the amounts that</p> <p>19 Baja billed for workers actually going to those</p> <p>20 workers?</p> <p>21 A. No idea. You'd need to ask them.</p> <p>22 Q. Was Newway aware at any point during the</p> <p>23 relevant period that workers on Baja's payroll were</p> <p>24 being underpaid?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Was it Newway's understanding when it set</p> <p>2 that rate between Joe Rigo and Carlos that there would</p> <p>3 be -- that the rate would correspond to -- the rate</p> <p>4 and hours would correspond to worker pay?</p> <p>5 MR. WANDLER: I'm going to object. Assumes</p> <p>6 facts not in evidence that those rates correspond to</p> <p>7 worker pay.</p> <p>8 Q. (By Ms. Franklin) Okay. I'm asking if</p> <p>9 there was an understanding that those rates did in</p> <p>10 fact correspond to worker pay?</p> <p>11 MR. WANDLER: Same objection. You haven't</p> <p>12 established that those rates do actually do that.</p> <p>13 MR. LARKIN: I'll join that objection.</p> <p>14 MS. KINCAID: Join.</p> <p>15 Q. (By Ms. Franklin) You can still answer.</p> <p>16 A. Would you ask it again?</p> <p>17 Q. I'm going to shift gears.</p> <p>18 Did the invoices from Baja include money</p> <p>19 owed to Baja workers for meal and rest breaks?</p> <p>20 A. No.</p> <p>21 Q. Did the invoices include money owed to Baja</p> <p>22 workers for overtime?</p> <p>23 A. No.</p> <p>24 Q. What was the agreed-upon rate per hour that</p> <p>25 Joe Rigo and Carlos Ibarra agreed upon?</p>

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<p>1 A. I have no idea what they paid their 2 employees. So it's an agreed-upon rate, but that was 3 based on PeopleReady. I don't know what they paid out 4 of that to their employees. 5 Q. Did the rate change when Baja workers worked 6 more than 40 hours in a week? 7 A. I never saw the rate change that they billed 8 us. We don't know what their base pay was. We don't 9 know what they included. 10 Q. Okay. But the rate that they billed you did 11 not change? 12 A. No. 13 Q. And did the invoices include money owed to 14 workers for sick time? 15 A. No. That would be on Baja. 16 Q. Did the invoices show that workers on Baja's 17 payroll sometimes worked more than 40 hours per week? 18 A. It was just a set standard hours the way 19 Roberto did it. 20 Q. Did the hours vary week by week? 21 A. Yes. 22 Q. So in a given week if workers did work more 23 than 40 hours, would the invoice show more than 40 24 hours for that worker? 25 A. I didn't look at the timesheet again so I'll</p>	<p>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</p>
Page 68	Page 69
<p>1 needed to work on a given day? 2 A. That would be up to their superintendent 3 and our lead, I guess. I don't know. 4 Q. But was it always a Newway employee who 5 determined how many hours the workers on the relevant 6 worksites worked? 7 A. No. 8 Q. Can you elaborate on that? 9 A. That would be Roberto Soto. 10 Q. How did Roberto Soto determine how many 11 hours workers needed to work on a given day? 12 A. It was my understanding that it was eight 13 hours every day. And then if there was a concrete 14 pour late then Roberto would tell his people that they 15 need to stay, his employees. 16 Q. How would Roberto know that there was a 17 circumstance requiring additional hours on a given 18 day? 19 A. A lead would tell him. It was voluntary. 20 Q. Would the lead instruct Roberto to offer his 21 workers additional hours on such a day? 22 A. Would you say that again? 23 Q. Would the lead instruct Roberto to offer 24 additional hours to workers on a day where there was 25 something more to be done?</p>	<p>1 A. He could offer them but it's all volunteer. 2 Q. But when he was offering them was it based 3 on information he received from someone at Newway? 4 A. They would regularly ask anybody, when that 5 situation arises, who wants to work. So they would 6 ask Roberto if anybody wants to stay. They don't have 7 to stay. 8 Q. When you say they would ask Roberto, who is 9 "they"? 10 A. A lead. 11 Q. A Newway lead? 12 A. Yes. 13 Q. Was the process the same for workers who 14 were on Baja payroll and Newway payroll of determining 15 how many hours a worker would work in a given day? 16 A. They're their own subcontractor so I mean 17 they can -- they can gauge how many hours they want to 18 work. If we get behind schedule we get behind 19 schedule. 20 Q. If there were extra concrete to be poured, 21 for example, would everyone on the worksite have the 22 opportunity to work extra hours, Baja workers and 23 Newway workers? 24 A. If they wanted to. 25 Q. Okay. How were work schedules communicated</p>


<p style="text-align: right;">Page 78</p> <p>1 A. Yes.</p> <p>2 Q. And did that happen with Baja?</p> <p>3 A. I don't think that ever was an issue.</p> <p>4 Q. So for Baja Newway prescribed the task and</p> <p>5 Baja would do it, is that correct?</p> <p>6 A. If Roberto agreed to it for his people and</p> <p>7 his staff.</p> <p>8 Q. But you said previously you never had an</p> <p>9 issue with Baja rejecting a task from Newway, right?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. So can you describe for me -- and I'm sorry,</p> <p>12 I don't know too much about construction sites -- just</p> <p>13 the duties of a lead for Newway?</p> <p>14 A. They're a foreman.</p> <p>15 Q. Is a lead the same as a foreman?</p> <p>16 A. Essentially.</p> <p>17 Q. Is there a slight difference?</p> <p>18 A. Not in Newway's terminology.</p> <p>19 Q. Okay. So what were the duties -- you told</p> <p>20 me they're basically a foreman, but what were the</p> <p>21 specific duties and tasks of a Newway lead?</p> <p>22 A. They work alongside with the employees but</p> <p>23 they are the head of their unit and they are the ones</p> <p>24 that would check in with the higher-ups.</p> <p>25 Q. Do leads tell their units what to do?</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Newway, yes.</p> <p>2 Q. When you say Newway, did Newway leads tell</p> <p>3 their units -- I guess did they tell subcontractors</p> <p>4 what to do?</p> <p>5 A. Through their superintendents.</p> <p>6 Q. Okay. Was Roberto the superintendent for</p> <p>7 Baja?</p> <p>8 A. Yes.</p> <p>9 Q. Let me think. Just a moment.</p> <p>10 So is there anything else that Newway leads</p> <p>11 were responsible for?</p> <p>12 A. Possibly just making sure people are</p> <p>13 attending the safety meetings, their employees, their</p> <p>14 staff underneath them.</p> <p>15 Q. Were Newway leads responsible for ensuring</p> <p>16 that Baja workers attended the safety meeting?</p> <p>17 A. It's our policy that all subcontractors come</p> <p>18 to the meetings but that would still be instructed</p> <p>19 through Roberto.</p> <p>20 Q. Was there an instruction from Newway to</p> <p>21 Roberto that Baja workers needed to attend those</p> <p>22 trainings?</p> <p>23 A. Yes.</p> <p>24 Q. Did Newway leads supervise the day-to-day</p> <p>25 work of their units?</p>
<p style="text-align: right;">Page 80</p> <p>1 A. Yes.</p> <p>2 Q. What were the duties of Antonio Machado?</p> <p>3 A. He was the main foreman.</p> <p>4 Q. And what was his role in that capacity?</p> <p>5 A. He oversaw -- he worked and he also oversaw</p> <p>6 all the leads.</p> <p>7 Q. Did he give direction to the leads?</p> <p>8 A. Yes.</p> <p>9 Q. And did he play a role in making sure things</p> <p>10 were being done correctly?</p> <p>11 A. Yes.</p> <p>12 Q. And did the leads do that as well?</p> <p>13 A. Yes.</p> <p>14 Q. Did the leads tell workers on Baja payroll</p> <p>15 where they should be stationed throughout the day?</p> <p>16 A. It goes to Roberto and Roberto would tell</p> <p>17 them.</p> <p>18 Q. Okay. When a Baja worker finished a given</p> <p>19 task who instructed him on what to do next?</p> <p>20 A. They would know for the whole day. That</p> <p>21 would be Roberto in the morning having meetings and</p> <p>22 they should know what they needed to do the entire</p> <p>23 day.</p> <p>24 Q. Okay. What would happen if a Newway lead</p> <p>25 noticed that Baja was doing work incorrectly?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I don't know but they would probably tell</p> <p>2 Roberto. Are you mean something simple or egregious?</p> <p>3 Q. Either one.</p> <p>4 A. Okay. If somebody was showing improper</p> <p>5 behavior then Roberto would be called.</p> <p>6 Q. Okay. Was it Newway's job to make sure that</p> <p>7 Baja workers were doing things correctly?</p> <p>8 A. I would still deflect that to Roberto.</p> <p>9 Q. Sorry, go ahead.</p> <p>10 A. It would be deflected to -- I mean explained</p> <p>11 to Roberto and it would be up to them to deal with</p> <p>12 their staff.</p> <p>13 Q. Okay. Was it part of the role of Newway in</p> <p>14 managing its subcontractors to make sure the</p> <p>15 subcontractors were doing things correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Did Roberto have any discretion on what</p> <p>18 tasks his workers would be doing at any given time?</p> <p>19 A. It's still basically following the schedule.</p> <p>20 Q. Well, was that schedule -- when you say the</p> <p>21 schedule do you mean a schedule dictated by Newway?</p> <p>22 A. No. By Onni.</p> <p>23 Q. Okay. So can you please describe Roberto's</p> <p>24 day-to-day interactions with Newway staff? You told</p> <p>25 me about that initial meeting in the morning. Did he</p>

<p style="text-align: right;">Page 86</p> <p>1 Did you say that Newway or Baja was</p> <p>2 providing both labor and concrete finishing, is that</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Were some of the workers -- go ahead.</p> <p>6 A. They supplied whoever they had.</p> <p>7 Q. Were some workers laborers and other ones</p> <p>8 concrete finishers?</p> <p>9 A. Yes.</p> <p>10 Q. Did Newway need a certain amount of laborers</p> <p>11 and a certain amount of concrete finishers?</p> <p>12 A. No.</p> <p>13 Q. Did it need any other skillsets in Baja</p> <p>14 workers?</p> <p>15 A. They were hired for cement finishing. And</p> <p>16 then Roberto just offered that he had more people and</p> <p>17 they could labor for us if they needed to. And they</p> <p>18 were already site-oriented so it made more sense then</p> <p>19 going to PeopleReady.</p> <p>20 Q. Did Newway and Roberto have ongoing</p> <p>21 conversations about hiring workers to work on the</p> <p>22 site?</p> <p>23 A. I'm sorry. Can you repeat the first name?</p> <p>24 I didn't hear it.</p> <p>25 Q. Sure. Did Newway and Roberto have ongoing</p>	<p style="text-align: right;">Page 87</p> <p>1 conversations about getting workers to work on the</p> <p>2 site?</p> <p>3 A. No.</p> <p>4 Q. Was it a one-time conversation?</p> <p>5 A. Roberto would just say he's got somebody and</p> <p>6 then they'd bring them to the site.</p> <p>7 Q. What would prompt Roberto to tell Newway</p> <p>8 that he had somebody?</p> <p>9 A. They wanted to use more people.</p> <p>10 Q. So would Newway communicate to Roberto that</p> <p>11 they needed more people?</p> <p>12 A. I don't believe it was ever that way. It</p> <p>13 was the opposite way.</p> <p>14 Q. Can you specify what you mean by that?</p> <p>15 A. Baja -- Roberto would say he has people,</p> <p>16 they need work and they'd go to Newway.</p> <p>17 Q. How did Roberto know that more workers were</p> <p>18 needed?</p> <p>19 A. He didn't. We can go out and hire</p> <p>20 anybody -- Newway can go hire anybody we want to.</p> <p>21 Roberto would say he has people and they need work</p> <p>22 and we hired them. He hired them to bring them on.</p> <p>23 Q. When he did that did he give any information</p> <p>24 to Newway about the people he had?</p> <p>25 A. Like?</p>
<p style="text-align: right;">Page 88</p> <p>1 Q. Skillset.</p> <p>2 A. Oh, skillset, maybe.</p> <p>3 Q. And then could Newway accept or reject the</p> <p>4 offer of additional people?</p> <p>5 A. Yes.</p> <p>6 Q. Is there a type of worker who would not be a</p> <p>7 good fit for the relevant worksite in the relevant</p> <p>8 time period?</p> <p>9 MR. WANDLER: I'm going to object to the</p> <p>10 form of the question.</p> <p>11 Q. (By Ms. Franklin) You can still answer.</p> <p>12 A. Would you repeat that again?</p> <p>13 Q. Was there a type of worker who would not be</p> <p>14 a desirable worker to have on the site?</p> <p>15 A. At that point I think anybody -- they would</p> <p>16 have hired anybody.</p> <p>17 Q. They just needed bodies?</p> <p>18 A. Yeah, they needed bodies. And then it's up</p> <p>19 to them working. Even with the union, when we'd bring</p> <p>20 in the union people, it would be up to that foreman to</p> <p>21 see if they have the correct skillset. That's for</p> <p>22 Newway.</p> <p>23 Q. But when Baja brought on people did anyone</p> <p>24 at Newway ever determine whether the people Baja was</p> <p>25 bringing on had the skillset that was needed?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. If it was noticed -- any subcontractor, if</p> <p>2 it's noted that somebody doesn't have the skillset</p> <p>3 then it would be reported to their supervisor, super.</p> <p>4 In this case Roberto Soto.</p> <p>5 Q. Okay. Were Baja workers on the relevant</p> <p>6 worksites ever fired during the relevant time period?</p> <p>7 A. I wouldn't know that. You'd have to ask</p> <p>8 Baja.</p> <p>9 Q. Did Newway play any role in firing workers?</p> <p>10 A. For Baja?</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. But Newway might notice that a worker did</p> <p>14 not have the right qualifications and inform the</p> <p>15 subcontractor's lead person, right?</p> <p>16 A. Right. But they didn't directly hire or</p> <p>17 fire anybody. A lot of times if we get a carpenter</p> <p>18 that doesn't have the skillset they are moved to labor</p> <p>19 because the union took them in improperly. They</p> <p>20 weren't the level that they should have been.</p> <p>21 I don't know what Baja did with somebody</p> <p>22 that the foreman said that they didn't have the</p> <p>23 skillset. I'm not sure.</p> <p>24 Q. I'm going to ask you generally about all</p> <p>25 workers. How were workers on the relevant worksites</p>

<p style="text-align: right;">Page 90</p> <p>1 disciplined?</p> <p>2 A. Two writeups, on a third, termination.</p> <p>3 Q. And what about Baja workers, was that the</p> <p>4 same process?</p> <p>5 A. We didn't have any control over their</p> <p>6 workers for hiring or firing.</p> <p>7 Q. If a Baja worker needed a writeup, would</p> <p>8 someone from Newway communicate that to Roberto?</p> <p>9 A. I suppose so. It would be Roberto.</p> <p>10 Q. If Roberto fired a worker would Newway be</p> <p>11 notified?</p> <p>12 A. No.</p> <p>13 Q. What about -- I'm sorry, I didn't mean to</p> <p>14 talk over you. Go ahead and finish.</p> <p>15 A. No, go ahead.</p> <p>16 Q. If Roberto disciplined a worker would anyone</p> <p>17 at Newway be notified?</p> <p>18 A. No.</p> <p>19 Q. Okay. So now I want to step back a little</p> <p>20 bit and ask you about the work that was being done on</p> <p>21 this worksite. And again you're going to have to</p> <p>22 excuse me because I don't know much about construction</p> <p>23 work.</p> <p>24 So what was Newway brought on to the</p> <p>25 relevant worksites to do?</p>	<p style="text-align: right;">Page 91</p> <p>1 A. We're concrete highrise subcontractors.</p> <p>2 Q. So what does that mean? What are the</p> <p>3 responsibilities associated with that?</p> <p>4 A. All the concrete to build the building.</p> <p>5 Seaco was in charge of the slabs and we're in charge</p> <p>6 of the vertical.</p> <p>7 Q. Anything else?</p> <p>8 A. No. We're a concrete subcontractor.</p> <p>9 Q. And did Newway have a contract with Onni</p> <p>10 requiring it to do these things?</p> <p>11 A. Yes.</p> <p>12 MR. WANDLER: Just to clarify, the contract</p> <p>13 with Onni we're only talking about the Denny site.</p> <p>14 MS. FRANKLIN: Okay. Thank you for the</p> <p>15 clarification.</p> <p>16 Q. (By Ms. Franklin) Did Newway have any</p> <p>17 contracts for the other two site?</p> <p>18 A. Yes.</p> <p>19 Q. Who were those with?</p> <p>20 A. Graham at 707 Terry and Axiom is 2014</p> <p>21 Fairview.</p> <p>22 Q. Okay. Thanks for that clarification.</p> <p>23 So let's go piece by piece, so let's talk</p> <p>24 about 1120 Denny.</p> <p>25 What was Baja's role relative to -- let me</p>
<p style="text-align: right;">Page 92</p> <p>1 see if I can rephrase that.</p> <p>2 So you said that -- so Baja was the</p> <p>3 subcontractor of Newway, correct?</p> <p>4 A. Yes.</p> <p>5 Q. What was Baja's role in helping Newway with</p> <p>6 the tasks that it was doing for Onni?</p> <p>7 A. Concrete finishing.</p> <p>8 MR. WANDLER: I don't think she got the</p> <p>9 answer.</p> <p>10 A. Cement finishing, concrete finishing.</p> <p>11 Q. (By Ms. Franklin) Okay. Can you just</p> <p>12 explain again -- I'm just not really understanding</p> <p>13 construction -- how did cement finishing fit into the</p> <p>14 job that Newway was being asked to do?</p> <p>15 A. We poured the concrete and they patch it,</p> <p>16 sand it, that kind of thing, build forms to pour the</p> <p>17 concrete in. And then that would be labor force ends</p> <p>18 up finishing.</p> <p>19 Q. Okay. Could Newway have done its job for</p> <p>20 Onni without somebody fulfilling the role that Baja</p> <p>21 was playing?</p> <p>22 A. We have cement finishers on staff.</p> <p>23 Q. But is cement finishing essential to</p> <p>24 Newway's task?</p> <p>25 A. Cement finishing, yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Okay. Now let's talk about the other</p> <p>2 worksites.</p> <p>3 So for the 707 Terry, was Newway's role the</p> <p>4 same in its contract there?</p> <p>5 A. Yes.</p> <p>6 Q. And was Baja's role the same?</p> <p>7 A. They were only brought on for one week, but</p> <p>8 yeah.</p> <p>9 Q. And what were they brought on to do in that</p> <p>10 one week?</p> <p>11 A. I believe labor, which would be setting up</p> <p>12 the forms to pour the concrete in.</p> <p>13 Q. Okay. Is that something that needed to</p> <p>14 happen in order for Newway to complete its tasks at</p> <p>15 707 Terry?</p> <p>16 A. Yes, but we can hire out of the union. We</p> <p>17 can hire PeopleReady. It wasn't imperative that we</p> <p>18 have Baja.</p> <p>19 Q. Okay. And what about 2014 Fairview Avenue,</p> <p>20 was Newway's contractual task the same?</p> <p>21 A. Yes.</p> <p>22 Q. And what about Baja's?</p> <p>23 A. Yes.</p> <p>24 Q. How did it come to be that Baja workers were</p> <p>25 dispatched to 707 Terry?</p>

Page 94	Page 95
<p>1 A. I think Tony talked to Roberto and Roberto 2 said that he could send a crew over. 3 Q. And how were -- you mentioned these tasks 4 could be done by many different companies. 5 Why did Tony Machado select Baja? 6 A. I'm not sure. I mean I could be incorrect, 7 it could be the opposite way. I'm just not sure. 8 Q. And how were workers dispatched to 2014 9 Terry? How did that come to be Baja workers? 10 A. Roberto. 11 Q. And do you know why Baja selected them? 12 A. He just offered staff. 13 Q. Were there other subcontractors in the same 14 business as Baja? 15 A. Not cement finishing. Do you mean for 16 Newway? 17 Q. Or just in the Seattle area, were there 18 other cement -- could they have hired other cement 19 finishers besides Baja? 20 A. Yeah. We can go to the hall. 21 Q. Why did Newway choose Baja over going to the 22 hall? 23 A. It's just going back to the agreement that 24 they had, the oral agreement in Canada. 25 Q. Did the oral agreement encompass all three</p>	<p>1 worksites? 2 A. I'm not sure how that came about. 3 Q. Okay. Just a minute. 4 MS. FRANKLIN: Let's take a five-minute 5 break, if we could. 6 Can we come back on the record at, I guess 7 we'll say 11:47? 8 MR. WANDLER: Could we do 11:50, just to 9 round up? 10 MS. FRANKLIN: We can do 11:50 to round up. 11 (Recess.). 12 Q. (By Ms. Franklin) I just have a couple more 13 questions and then some exhibits. 14 Did Newway have a physical office at 1120 15 Denny Way? 16 A. Yes. 17 Q. Did workers who were on Baja's payroll use 18 Newway's equipment to perform their day-to-day work? 19 A. Everybody brings their own tools, so maybe a 20 hammer. Any large equipment is Newway's equipment. 21 Q. Did Baja supply any of the equipment itself? 22 A. I'm not sure. 23 Q. Okay. You mentioned previously that you 24 personally were not really on the worksite at 1120 25 Denny Way, correct?</p>
Page 96	Page 97
<p>1 A. I visited but I was not down there every 2 day. 3 Q. Okay. So when you said that Roberto was 4 usually there, how do you know that? 5 A. Because he was avoiding me but I know the 6 day he was there. 7 Q. How do you know that specifically? 8 A. I had been asking for insurance since 2019 9 with us being a lienholder. And I couldn't get any 10 response from Claudia Mercedes and so I started 11 hounding Roberto. 12 And their workers comp expired so I went 13 after them for that. And I would just ask "Are you 14 guys talking to him?" 15 And they're like "Oh, yeah, he answers our 16 calls." But I couldn't get ahold of him. 17 Q. So do you know that he was in contact with 18 them or that he was physically on the site all day? 19 A. I can't clarify between the two. I'm not 20 sure. 21 Q. Okay. And how do you know who was in charge 22 when Roberto was not there? 23 A. They would just tell me because I was 24 looking for him. 25 Q. They would tell you that Rios was in charge?</p>	<p>1 A. Somebody was in charge, Noyes Rios. 2 Q. Did they ever tell you that anyone else was 3 in charge? 4 A. I believe there was. I don't know their 5 names. 6 Q. How often did you come to a worksite in the 7 relevant period? 8 A. It used to be every week until about 2019, 9 later in 2019. 10 Q. And after that through August 2020 how often 11 was it? 12 A. I didn't go down. 13 Q. Sorry? 14 A. I didn't go down to the site. 15 Q. Okay. So after late 2019 you were never 16 there? 17 A. Actually, I apologize. Maybe once, I did go 18 down once. 19 Q. Okay. What is the source of knowledge 20 about -- your source of knowledge -- I know you're 21 testifying today on behalf of Newway. Where did you 22 get your information about breaks and who set those 23 breaks? 24 A. That was the one question I asked Tom Grant. 25 Q. Okay. Did you discuss breaks other than</p>

<p style="text-align: right;">Page 110</p> <p>1 A. Verify that they were on site.</p> <p>2 Q. And with regards to the Baja invoices, I</p> <p>3 think there was a series of questions where they asked</p> <p>4 you whether or not break time was included in the</p> <p>5 invoice or sick time was included in the invoice.</p> <p>6 Was there any way for you, Newway, to be</p> <p>7 able to tell whether those items were included in the</p> <p>8 invoice?</p> <p>9 A. No.</p> <p>10 Q. Did the invoices in any way break out what</p> <p>11 was being paid to the Baja employees as opposed to</p> <p>12 what Baja was asking to be paid?</p> <p>13 A. No.</p> <p>14 Q. So there was no information contained in</p> <p>15 there about what the employees were being paid or not?</p> <p>16 A. No.</p> <p>17 Q. Whether they were working overtime or not?</p> <p>18 A. No.</p> <p>19 Q. Whether they were taking sick time or not?</p> <p>20 A. No.</p> <p>21 Q. Whether or not they were receiving paid</p> <p>22 breaks?</p> <p>23 A. No.</p> <p>24 Q. Just in terms of the process of a</p> <p>25 construction site, let's walk through the day, and</p>	<p style="text-align: right;">Page 111</p> <p>1 I'll do it on a piece-by-piece basis.</p> <p>2 A. Okay.</p> <p>3 Q. You talked about the early morning meetings</p> <p>4 where tasks are assigned.</p> <p>5 What's the basis for the assignment of those</p> <p>6 tasks? In other words, who comes up with what tasks</p> <p>7 need to be done and where does that come from?</p> <p>8 A. The scope of work.</p> <p>9 Q. Where is that defined?</p> <p>10 A. It's defined by a schedule.</p> <p>11 Q. Who creates the schedule?</p> <p>12 A. Onni.</p> <p>13 Q. Onni. And Onni is the general contractor?</p> <p>14 A. Yes.</p> <p>15 Q. So if I understand correctly, every day Onni</p> <p>16 prepares the schedule and you guys know what you're</p> <p>17 supposed to do, you have a meeting.</p> <p>18 What's discussed at the meeting?</p> <p>19 A. Each individual subcontractor's scope of</p> <p>20 work.</p> <p>21 Q. Okay. Is it the subcontractor's</p> <p>22 responsibility to determine how they perform that</p> <p>23 scope of work?</p> <p>24 A. Yes.</p> <p>25 Q. Is it their responsibility to determine how</p>
<p style="text-align: right;">Page 112</p> <p>1 many people they need to complete that scope of work?</p> <p>2 A. Yes.</p> <p>3 Q. Does Newway have any say in the means and</p> <p>4 methods and the labor that goes into a subcontractor's</p> <p>5 performance of their scope of work?</p> <p>6 A. No.</p> <p>7 MR. WANDLER: That's all I have.</p> <p>8 MR. LARKIN: I have a few follow-up</p> <p>9 questions if this is my time.</p> <p>10 EXAMINATION</p> <p>11 BY MR. LARKIN:</p> <p>12 Q. You testified, if I got it right this</p> <p>13 morning, that it was about a year and a half into the</p> <p>14 relevant time period when you spotted, I think you</p> <p>15 said, what appeared to be maybe three irregularities,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. That was "Yes" for the record. I'm not sure</p> <p>19 if that was clear.</p> <p>20 So a year and a half in. So by that time</p> <p>21 there had been a whole lot of daily labor provided by</p> <p>22 Baja to Newway, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And prior to the time clock, so during that</p> <p>25 first year and a half portion of the relevant time</p>	<p style="text-align: right;">Page 113</p> <p>1 period, the timekeeping methods being used onsite,</p> <p>2 certainly by the Baja labor and probably by others,</p> <p>3 was a very manual system or not much of a system at</p> <p>4 all. It was done manually?</p> <p>5 A. For Baja or for Newway?</p> <p>6 Q. For Baja.</p> <p>7 A. They didn't track their hours at all. I</p> <p>8 mean they didn't track their people at all. They just</p> <p>9 sent in invoices, Roberto did. And Joe Rigo and Chris</p> <p>10 Birch would just sign off on them.</p> <p>11 Q. Okay. So isn't it fair to say that in maybe</p> <p>12 a year and a half spotting only three irregularities</p> <p>13 in timekeeping, considering how much labor must have</p> <p>14 been provided by them, that could be simply just</p> <p>15 honest errors, right, those three irregularities?</p> <p>16 MR. WANDLER: Object to the form of the</p> <p>17 question.</p> <p>18 You can answer.</p> <p>19 A. Not using whiteout.</p> <p>20 Q. (By Mr. Larkin) Would the workers have</p> <p>21 written something down incorrectly and then wanted to</p> <p>22 correct it?</p> <p>23 A. No. Their name was whited out on the top.</p> <p>24 Somebody had worked two days, Monday and Tuesday, and</p> <p>25 that guy was gone. Another guy came in, they handed</p>

<p style="text-align: right;">Page 122</p> <p>1 Q. And as long as Newway stayed on track with 2 Onni's schedule did it have any discretion as to the 3 order in which to do different steps? 4 A. That's -- I would assume so. I mean that's 5 up to Tom and Tony and I don't know. 6 Q. Would those decisions get communicated to -- 7 the decisions of Tom and Tony about the order in which 8 to do different steps, would those decisions get 9 passed down to subcontractors? 10 A. I would say yes. 11 Q. Okay. And now I want to just return very 12 briefly to the discussion of the time clocks. 13 You said that the purpose of installing the 14 time clocks was just to get a record of which Baja 15 employees were onsite on a given day, correct? 16 A. Yes. 17 Q. But those time clocks did give you the 18 ability to verify how many hours a given employee had 19 worked, if you had wanted to do so, right? 20 A. Roberto still had his own invoices. We 21 could cross-reference them. 22 I don't think there was ever a question 23 about hours that I can recall. 24 Q. But if there were, could you cross-reference 25 invoices against the records from the time clocks and</p>	<p style="text-align: right;">Page 123</p> <p>1 timecards? 2 A. Yes. 3 MS. FRANKLIN: Okay. I don't have any 4 further questions. Thank you. 5 MR. WANDLER: Are we done? 6 MR. LARKIN: No further questions for me. 7 MS. KINCAID: Nothing for me. 8 MR. WANDLER: We'll reserve signature. 9 (Deposition recessed at 12:35 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 124</p> <p>1 SIGNATURE 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 14 15 16 17 18 19 20 21 22 Re: Appeal of Baja Concrete 23 Cause No.: LS-21-002, 003, 004 24 Pat Lessard, CCR 2104 25</p>	<p style="text-align: right;">Page 125</p> <p>1 CERTIFICATE 2 STATE OF WASHINGTON) 3) ss. 4 COUNTY OF KING) 5 I, the undersigned Washington Certified Court 6 Reporter, hereby certify that the foregoing deposition upon 7 oral examination of KWYNNE GRANT was taken stenographically 8 by me on May 5, 2022 and transcribed under my direction; 9 That the witness was duly sworn by me pursuant to 10 RCW 5.28.010 to testify truthfully; that the transcript of 11 the deposition is a full, true, and correct transcript to 12 the best of my ability; that I am neither attorney for nor 13 relative or employee of any of the parties to the action or 14 any attorney or counsel employed by the parties hereto, nor 15 am I financially interested in its outcome. 16 I further certify that in accordance with 17 CR 30(e) the witness was given the opportunity to examine, 18 read and sign the deposition within 30 days upon its 19 completion and submission, unless waiver of 20 signature was indicated in the record. 21 IN WITNESS WHEREOF, I have hereunto set my hand this 22 12th day of May, 2022. 23 _____ 24 Pat Lessard, 25 pat@court-reporter.com</p> 

32 (Pages 122 to 125)

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EXHIBIT

7

Forler-Grant
5/5/2022
Pat Lessard, CCR

1120 Dring's Way

Work Period: *03/23/2020 - 03/28/2020* Pay Date: *03/25*

NAME: *Jose Acosta* SUNDAY *03/23* MONDAY *03/24* TUESDAY *03/25* WEDNESDAY *03/26* THURSDAY *03/27* FRIDAY *03/28* SATURDAY

Comments: *8* *8* *8* *8* *8* *8* *8*

Gerardo Valencio *8.5* *8* *8* *8* *8* *8*

Gabriel Ortiz / Carpenter *8* *8* *8* *8* *8* *8*

Roberto Hiraldo / Carpenter *8* *8* *8* *8* *8* *8*

NAME: *Jose Estrada* SUNDAY *03/23* MONDAY *03/24* TUESDAY *03/25* WEDNESDAY *03/26* THURSDAY *03/27* FRIDAY *03/28* SATURDAY

Comments: *8* *8* *8* *8* *8* *8* *8*

Gerardo Suarez *8* *8* *8* *8* *8* *8*

Miguel Alfaro *8* *8* *8* *8* *8* *8*

Noe Rios *8* *8* *8* *8* *8* *8*

Patricio Fernandez *8* *8* *8* *8* *8* *8*

Manuel Camus *8* *8* *8* *8* *8* *8*

Marco Polo Villaverde *8* *8* *8* *8* *8* *8*

Roberto Lopez *8* *8* *8* *8* *8* *8*

Marques Viveros *8* *8* *8* *8* *8* *8*

Raul Hiraldo *8* *8* *8* *8* *8* *8*

Julio Caballero *8* *8* *8* *8* *8* *8*

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NEWWAY-002158



Work Period:

Pay Date:

DATE 12/11/18
NAME

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
Labourers	Comments	Comments	Comments	Comments	Comments	Comments	Comments	
Claudio Gamboa		10 Shore	12 concrete	10 concrete	12 concrete	13 concrete	12 Striping	69
Alejandro Fiol		10 Striping	10 Shore	10 Clean	9 Clean	6 Striping	8 Striping	53
Lucas Ayala		10 Shore	10 Shore	10 Striping	10 Clean	13 Striping	8 Striping	61
Matias Rodriguez		10 Shore	11 Shore	10 Clean	10 Clean	13 Striping	17 Concrete	66
Camilo Diaz		10 Shore	10 Shore	10 Clean	10 Clean	13 Striping	8 Concrete	61
								310

DATE -->

Pay Date:

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
Cement Finishers	Comments	Comments	Comments	Comments	Comments	Comments	Comments	Total
Noe Rios		9 Patching	9 Patch	9 Patching	9 Patching	11 Patching	4 Patching	51
Cristian Navejas		9 Chipping	9 Grading	9 Chipping	9 Chipping	11 Chipping	4 Chipping	51
Ivan Parra		9 Chipping	9 Chipping	9 Chipping	9 Chipping	11 Chipping	4 Patching	51
David Giron		9 Chipping	9 Grading	9 Chipping	9 Patching	11 Patching	4 Chipping	51
								204

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NEWWAY-002213

Date Recd
 From
 Amount
 Balance
 Total

George W. W.

13 / 08 / 18

[illegible]

Craig Kuchel

8/27/2018

From: [Kwynne Grant](#)
To: jrconcrete99@gmail.com
Cc: [Tom Grant](#); [Adam Pilling](#); [Connor Forler](#)
Subject: Employees for Baja
Date: Wednesday, September 18, 2019 10:58:03 AM
Attachments: [image001_9c9da7f2-6ad5-4948-848a-354f8c9b3e31.png](#)



Hi Roberto -

As you might be aware of, we have two new supers/managers at the 1120 Denny Way site. Could you please begin to enter your employees last names on the time sheets as well as the first and also, we are going to make an onsite timesheet so they will have to come in and check in and checkout at the end of the day. Once we receive their full name we will complete the form.

Let us know if you have any questions.

Thank you.

Sincerely,

Kwynne Grant
Project Coordinator

Newway Forming, Inc.
1133 164th Street, SW, Suite 204, Lynnwood, WA, 98087
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