

2/3/2022 Deposition Excerpts:  
Daron Williams (individually)

**EXHIBIT D**  
**TO DECLARATION OF CINDI WILLIAMS**

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

Page 2			Page 3		
1	APPEARANCES		1	APPEARANCES	
2			2		
3	FOR BAJA CONCRETE USA CORP: ALEX T LARKIN		3	FOR ANTONIO MACHADO:	
4	MDK Law Associates		4	SARA KINCAID	
5	777 108th Avenue NE, Suite 2000		5	Rocke Law Group	
6	Bellevue, Washington 98004		6	500 Union Street, Suite 909	
7	425 455 9610		7	Seattle, Washington 98101-4052	
8	alarkin@mdklaw.com		8	206.652.8670	
9			9	Sara@rockelaw.com	
10	FOR CITY OF SEATTLE OFFICE OF LABOR STANDARDS:		10		
11	JEREMIAH MILLER		11		
12	ERICA FRANKLIN		12	ALSO PRESENT: CLAUDIA PENUNURI	
13	Seattle City Attorney's Office		13		
14	701 Fifth Avenue, Suite 2050		14		
15	Seattle, Washington 98104-7095		15		
16	206 684 8200		16		
17	jeremiah.miller@seattle.gov		17		
18			18		
19	FOR NEWWAY FORMING, INC :		19		
20	NICOLE WOLFE		20		
21	Oles Morrison Rinker & Baker		21		
22	701 Pike Street, Suite 1700		22		
23	Seattle, Washington 98101		23		
24	206 623 3427		24		
25	wolfe@oles.com		25		
Page 4			Page 5		
1	EXAMINATION		1	EXHIBIT INDEX	
2	ATTORNEY	PAGE	2	EX#	DESCRIPTION
3	BY MR LARKIN:	7	3	(Ex. 6 cont'd) CAS-2020-00186.	PAGE
4	BY MR LARKIN:	88	4	6 10/20/2020 interview notes,	68
5	BY MS KINCAID:	192	5	SEATTLE-OLS-1060-1067.	
6	BY MS WOLFE:	211	6	7 5/13/2020 interview notes,	74
7	BY MR LARKIN:	224	7	SEATTLE-OLS-1145-1148.	
8	EXHIBIT INDEX		8	8 1/29/2020 interview statement,	79
9	EX#	DESCRIPTION	9	"SEATTLE-OLS-2088-1094.	
10	1 4/2/2020 (last updated 5/18/2020) memo to	14	10	9 2/19/2020 interview notes,	88
11	Case File from Daron Williams and Ashley		11	SEATTLE-OLS-1095-1101.	
12	Harrison		12	10 3/8/2020 interview notes,	97
13	2 5/22/2020 letter to Baja Concrete USA	47	13	SEATTLE-OLS-1117-1124.	
14	Corp, Roberto Contreras, Claudia		14	11 3/8/2020 interview statement,	97
15	Penunuri, and Carlos Penunuri Ibarra from		15	SEATTLE-OLS-1125-1130.	
16	Daron Williams and Ashley Harrison		16	12 3/15/2018 interview statement,	101
17	3 5/22/2020 letter to Antonio Machado,	50	17	SEATTLE-OLS-1139-1144.	
18	Salvatore Giantamaso, Franco Corona,		18	13 Undated interview notes,	106
19	Newway Forming Inc from Daron Williams		19	SEATTLE-OLS-1132-1138.	
20	and Ashley Harrison		20	14 2/12/2020 interview summary,	109
21	4 7/16/2020 "subpoena duces tecum" OLS CASE	53	21	SEATTLE-OLS-1109-1116.	
22	NO CAS-2020-00186		22	15 1/29/2020 interview notes,	114
23	5 7/16/2020 "DECLARATION OF LABOR STANDARDS	60	23	SEATTLE-OLS-1102-1108.	
24	INVESTIGATOR DARON WILLIAMS IN SUPPORT OF		24	16 8/25/2021 "FINDINGS OF FACT,	116
25	SUBPOENA DUCES TECUM," OLS CASE NO		25	DETERMINATION AND FINAL ORDER."	

2 (Pages 2 to 5)

SEATTLE DEPOSITION REPORTERS, LLC

www.seadep.com

206.622.6661 \* 800.657.1110 FAX: 206.622.6236

Page 6	Page 7
<p>1 EXHIBIT INDEX</p> <p>2 EX# DESCRIPTION PAGE</p> <p>3 17 Spreadsheet. 181</p> <p>4 18 Email thread ending 12/7/2020 from 204</p> <p>5 Mercedes De Armas to Daron Williams,</p> <p>6 SEATTLE-OLS-0250-0251.</p> <p>7 19 Photograph of Baja Concrete USA business 206</p> <p>8 card, SEATTLE-OLS-0985.</p> <p>9 20 10/21/2018 letter "To whom it mat 208</p> <p>10 concern:" from Claudia Penunuri,</p> <p>11 SEATTLE-OLS-0989.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DARON WILLIAMS, witness herein, having been</p> <p>2 duly sworn by the Certified</p> <p>3 Court Reporter, testified</p> <p>4 upon oath as follows:</p> <p>5 (Pre-marked Deposition Exhibits 1-17.)</p> <p>6 EXAMINATION</p> <p>7 BY MR. LARKIN:</p> <p>8 Q. Well, good morning, Mr. Williams. Thanks</p> <p>9 for making yourself available. I'm Alex Larkin. I'm</p> <p>10 one of the lawyers for Baja Concrete USA Corp.</p> <p>11 That's -- I'm sure you're aware of what's going on</p> <p>12 here. The Seattle Office of Labor Standards conducted</p> <p>13 an investigation, issued a determination, and my</p> <p>14 clients and two other parties have filed appeals of</p> <p>15 that determination and findings of fact, so we're --</p> <p>16 so that's why we're here.</p> <p>17 So I have to just lay out some basic ground</p> <p>18 rules and ask a couple of basic questions as we do</p> <p>19 with every deposition before we start into the</p> <p>20 substance.</p> <p>21 First of all, you are under oath, so you</p> <p>22 have to answer truthfully. If you don't know -- if</p> <p>23 you don't have an answer to a question, just say you</p> <p>24 don't know. That's perfectly fine.</p> <p>25 We have to be careful -- you and I and other</p>
Page 8	Page 9
<p>1 lawyers have to be careful not to talk over each</p> <p>2 other. So when someone's asking a question just</p> <p>3 wait -- even if it's obvious what the question is,</p> <p>4 just wait until we finish ans -- asking the question</p> <p>5 before you start responding. And -- and, likewise, I</p> <p>6 have to be careful not to talk over you when you're</p> <p>7 responding.</p> <p>8 Answer questions as much as possible with a</p> <p>9 clear yes or no or -- as opposed to, you know, huh-uh</p> <p>10 or yeah because we need to be clear for the reporter.</p> <p>11 We can take breaks -- you can take breaks</p> <p>12 whenever you want. Just -- just say so if you need</p> <p>13 to -- you know, want to take a break. The only</p> <p>14 exception is you can't take a break while there's a</p> <p>15 question pending, so if I've asked a question, you --</p> <p>16 you have to answer before we go on break.</p> <p>17 And I have to ask, do you have any physical</p> <p>18 or mental conditions that might impair your ability to</p> <p>19 answer questions today?</p> <p>20 A. No.</p> <p>21 Q. And are you on any medications that might</p> <p>22 impair your ability to answer questions today?</p> <p>23 A. No.</p> <p>24 Q. So please provide your full name and spell</p> <p>25 it.</p>	<p>1 A. Daron Williams, which is D-A-R-O-N</p> <p>2 W-I-L-L-I-A-M-S.</p> <p>3 Q. And your add -- your work address, please.</p> <p>4 A. 810 Third Avenue, Suite 375, Seattle,</p> <p>5 Washington.</p> <p>6 Q. And what is your education level?</p> <p>7 A. Bachelor's degree.</p> <p>8 Q. In what major, if I can ask?</p> <p>9 A. I double majored in aviation flight science</p> <p>10 and political science.</p> <p>11 Q. And have you ever been deposed like this</p> <p>12 before?</p> <p>13 A. Yes, once.</p> <p>14 Q. Was it in this kind of capacity also as a</p> <p>15 labor investigator?</p> <p>16 A. Yes.</p> <p>17 Q. Have you ever testified in a hearing or a</p> <p>18 court proceeding?</p> <p>19 A. Yes.</p> <p>20 Q. Again, was it in your capacity in this</p> <p>21 occupation or in some other capacity?</p> <p>22 A. It's my occupation here.</p> <p>23 Q. Okay.</p> <p>24 And how many wage claim investigation -- how</p> <p>25 many, say, labor ordinance violation investigations</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 have you been involved in?</p> <p>2 A. Since my start of time or -- yeah. I think</p> <p>3 around 45, something like that.</p> <p>4 Q. So that -- was that all with the City of</p> <p>5 Seattle?</p> <p>6 A. That's correct.</p> <p>7 Q. What is your current occupation?</p> <p>8 A. Senior investigator.</p> <p>9 Q. And your employer is?</p> <p>10 A. Office of Labor Standards, City of Seattle.</p> <p>11 Q. Okay.</p> <p>12 And how long have you been in that position?</p> <p>13 A. Since 2018.</p> <p>14 Q. And prior to that?</p> <p>15 A. I was just a labor standards investigator,</p> <p>16 not a senior one.</p> <p>17 Q. Okay.</p> <p>18 And that was also with City of Seattle?</p> <p>19 A. Yes.</p> <p>20 Q. So how long have you been working for --</p> <p>21 with the City of Seattle?</p> <p>22 A. Since August of 2017.</p> <p>23 Q. And has it all -- since between then and now</p> <p>24 have -- have you always been with the Office of Labor</p> <p>25 Standards?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 Prior to working for the City of Seattle</p> <p>4 Office of Labor Standards what -- what was your</p> <p>5 occupation?</p> <p>6 A. I worked for a local non-profit called</p> <p>7 Working Washington.</p> <p>8 Q. And in your current position what -- how --</p> <p>9 how would you describe your -- your job duties?</p> <p>10 A. I investigate possible violations. I do</p> <p>11 intake as well. We also look over legal notes, things</p> <p>12 of that nature. Main -- main part of it is just</p> <p>13 investigating possible violations of ordinances.</p> <p>14 Q. And does that include doing a lot of</p> <p>15 interviews of witnesses?</p> <p>16 A. Yes. That's correct.</p> <p>17 Q. Are you familiar with a project or, say,</p> <p>18 real estate development project located at 1120 Denny</p> <p>19 Way in Seattle?</p> <p>20 A. Yes.</p> <p>21 Q. Are you familiar with a project at 707 Terry</p> <p>22 Avenue in Seattle?</p> <p>23 A. Yes.</p> <p>24 Q. Are you familiar with a project at</p> <p>25 2014 Fairview Avenue in Seattle?</p>
<p style="text-align: right;">Page 12</p> <p>1 A. Yes.</p> <p>2 Q. So you were the lead -- were you the lead --</p> <p>3 lead investigator in this Office of Labor Standards</p> <p>4 investigation that we're here to talk about today?</p> <p>5 Were you the lead investigator?</p> <p>6 A. I mean, we were co-investigating, me and my</p> <p>7 colleague, so I'm not sure if I was the lead per se,</p> <p>8 but I was more senior than she was, so --</p> <p>9 Q. And who was she? Who are you referring to?</p> <p>10 A. Ashley Harrison.</p> <p>11 Q. All right.</p> <p>12 Do you feel like you're in a position today</p> <p>13 to speak substantially on behalf of the Office of</p> <p>14 Labor Standards in relation to this labor ordinance</p> <p>15 investigation?</p> <p>16 A. Yes.</p> <p>17 MR. MILLER: Objection to the question,</p> <p>18 there, Alex. And I -- I don't mean this to be an</p> <p>19 objection, but you did identify him individually.</p> <p>20 He's not an organizational representative like in the</p> <p>21 sense of a 30(b)(6) representative.</p> <p>22 MR. LARKIN: Okay.</p> <p>23 MR. MILLER: That's all.</p> <p>24 Q. (By Mr. Larkin) Let me -- well, the -- the</p> <p>25 investigation that you did or that you and your team,</p>	<p style="text-align: right;">Page 13</p> <p>1 you and Ashley and -- and perhaps others, that is the</p> <p>2 subject of this -- this case, what was the time period</p> <p>3 that you -- that the investigation covered?</p> <p>4 A. It covered around February of 2018 through</p> <p>5 around July of 2020 I believe.</p> <p>6 Q. Okay.</p> <p>7 And did the investigation relate only to the</p> <p>8 1120 Denny Way project?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 So did it also relate to the Terry Avenue</p> <p>12 project?</p> <p>13 A. Yes.</p> <p>14 Q. And the Fairview Avenue project?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 Any other projects as part of this</p> <p>18 investigation?</p> <p>19 A. Directly, no.</p> <p>20 Q. Throughout the investigation in this matter</p> <p>21 was the OLS -- I'll just call it the OLS, if that's</p> <p>22 okay, the Office of Labor Standards. -- was --</p> <p>23 A. Okay.</p> <p>24 Q. -- the O -- was the OLS receiving legal</p> <p>25 counsel?</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 A. Can you say that again? Sorry.</p> <p>2 Q. During the investigation in this matter was</p> <p>3 the OLS receiving legal counsel?</p> <p>4 A. In what way?</p> <p>5 Q. Was there, for example, an attorney from the</p> <p>6 Seattle City Attorney's Office involved in the</p> <p>7 investigation?</p> <p>8 A. Yes.</p> <p>9 Q. Yes?</p> <p>10 A. Yeah.</p> <p>11 Q. From the very beginning of the</p> <p>12 investigation?</p> <p>13 A. Not from the very beginning, no.</p> <p>14 Q. Can you estimate, at least approximately,</p> <p>15 when did a City attorney or assistant attorney get</p> <p>16 involved?</p> <p>17 A. I don't know the exact date when exactly it</p> <p>18 happened.</p> <p>19 Q. So in these investigations generally is</p> <p>20 there -- is there usually a City attorney involved?</p> <p>21 A. Not always, no.</p> <p>22 Q. Okay. I'm going to go ahead and introduce</p> <p>23 what is marked as Exhibit 1. I will share my screen.</p> <p>24 I think that'll work here. Let's see here. And I</p> <p>25 distributed these exhibits, so maybe -- have you seen</p>	<p style="text-align: right;">Page 15</p> <p>1 the exhibits that were --</p> <p>2 A. Yes, I have.</p> <p>3 Q. Let me Share Screen here. Just give me a</p> <p>4 moment to share.</p> <p>5 Okay. Do you see this document,</p> <p>6 Mr. Williams?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recognize it?</p> <p>9 A. Yeah.</p> <p>10 Q. Can you describe, what is this document?</p> <p>11 A. This is a memo that myself and Ashley wrote.</p> <p>12 It was kind of a -- like an ongoing document. We just</p> <p>13 added information we learned throughout the case. And</p> <p>14 at some point we stopped adding to it, so it's not</p> <p>15 very current.</p> <p>16 MR. LARKIN: What I'd like to do is if</p> <p>17 somebody can tell me how I can give Mr. Williams, for</p> <p>18 a moment anyway, control of the document so he can</p> <p>19 scroll down? Does -- can someone tell me how to do</p> <p>20 that? Does anybody --</p> <p>21 A. I'm not --</p> <p>22 MR. LARKIN: -- know?</p> <p>23 A. -- sure how to do it. Just --</p> <p>24 Q. (By Mr. Larkin) Okay.</p> <p>25 A. Just scroll down to the screen you -- you</p>
<p style="text-align: right;">Page 16</p> <p>1 want me to read on. That's fine.</p> <p>2 Q. Okay. I'll -- I'm just going to scroll</p> <p>3 through the document kind of slowly and you can</p> <p>4 just -- and then I'll come back and ask some</p> <p>5 questions.</p> <p>6 A. Okay.</p> <p>7 Q. And -- so --</p> <p>8 Okay. So if we look in the paragraph just</p> <p>9 under where it says "Intake" --</p> <p>10 A. Yeah.</p> <p>11 Q. -- do you mind just reading out loud just</p> <p>12 that first sentence there.</p> <p>13 A. "During the week of January 6th two workers</p> <p>14 reached out to Casa Latina speaking of possible labor</p> <p>15 violations at a company called Baja Concrete."</p> <p>16 Q. Okay.</p> <p>17 So -- first of all, just -- I guess what is</p> <p>18 Casa Latina?</p> <p>19 A. It's a community partner that we have for</p> <p>20 City of Seattle Office of Labor Standards. We connect</p> <p>21 with them on certain issues. So one of these issues</p> <p>22 is that they do referrals for our office. So people</p> <p>23 might come in, and we talk to them about possible</p> <p>24 violations that could be occurring in the city.</p> <p>25 Q. So is Casa Latina a non- --</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Non- --</p> <p>2 Q. -- profit?</p> <p>3 A. -- profit, yeah.</p> <p>4 Q. Okay.</p> <p>5 And you're not here to speak for them, of</p> <p>6 course, but what -- what -- if I -- besides referring</p> <p>7 possible violations to your office, what -- what does</p> <p>8 Casa Latina do?</p> <p>9 A. They also provide training for workers as</p> <p>10 well too, res -- connect resources that they may need,</p> <p>11 some workers may need. So various resources. I can't</p> <p>12 speak on all of them. I'm not sure what all of them</p> <p>13 are, so --</p> <p>14 Q. Okay.</p> <p>15 So does that happen frequently where Casa</p> <p>16 Latina refers alleged labor violations, labor</p> <p>17 ordinance violations, to your office?</p> <p>18 A. Define frequently.</p> <p>19 Q. Well, that actually -- in your time since</p> <p>20 2017 with the City there about how many times has Casa</p> <p>21 Latina referred such matters to you, to your office?</p> <p>22 A. I don't know if I can speak on that -- I'm</p> <p>23 not sure -- because I'm not -- I don't -- I don't get</p> <p>24 the referrals myself directly. It goes to our -- our</p> <p>25 manager, so --</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 Q. Okay.</p> <p>2 But this is not the first time they've</p> <p>3 referred such a matter, right?</p> <p>4 A. No.</p> <p>5 Q. Can you just describe how -- maybe you</p> <p>6 didn't receive the referral directly, but if -- if you</p> <p>7 can, describe how the matter -- this matter, this one,</p> <p>8 was referred by Casa Latina to the City of Seattle.</p> <p>9 A. Some workers came in to Casa Latina and</p> <p>10 represented to our outreach coord -- coordinator or</p> <p>11 manager -- can't remember what the title was --</p> <p>12 reached out to our office and said we have some</p> <p>13 possible violations at this employer called Baja</p> <p>14 Concrete, and they kind of listed some of the</p> <p>15 violations that may have occurred.</p> <p>16 Q. I see.</p> <p>17 And who from Casa -- who from Casa Latina</p> <p>18 contacted the OLS?</p> <p>19 A. That was Colleen. I can't remember her last</p> <p>20 name, though, right now. It -- oh. Fontana. Fon --</p> <p>21 Fontana? Yeah.</p> <p>22 Q. Just backing up a little bit, what really is</p> <p>23 the purpose of this document we're looking at, this</p> <p>24 memo?</p> <p>25 A. Like it kind of says up above there, it's</p>	<p style="text-align: right;">Page 19</p> <p>1 just a living document summarizing the investigation.</p> <p>2 Just kind of goes through it, just our thoughts of</p> <p>3 what happens on the case, like the notes pretty much.</p> <p>4 Q. And it looks like we see some redactions --</p> <p>5 quite a bit -- quite a few redactions throughout the</p> <p>6 document. What -- why are there redactions?</p> <p>7 MR. MILLER: Objection; form of the</p> <p>8 question, lacks foundation.</p> <p>9 Q. (By Mr. Larkin) Mr. Williams, are there --</p> <p>10 is there information redacted from this document?</p> <p>11 A. Yes.</p> <p>12 Q. And why is there information redacted from</p> <p>13 the document?</p> <p>14 MR. MILLER: Same objection.</p> <p>15 Q. (By Mr. Larkin) Please go ahead and answer.</p> <p>16 A lot of these objections are preserved for the</p> <p>17 record, Mr. Williams, but you still need to answer.</p> <p>18 A. To protect the identity of the workers who</p> <p>19 requested nondisclosure.</p> <p>20 Q. Does the -- it looks like within this first</p> <p>21 blocked-out redacted area we see some kind of code?</p> <p>22 Does that -- 08CEX, does that mean anything?</p> <p>23 A. I don't know what that means directly</p> <p>24 myself. I don't know what that means.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 20</p> <p>1 Can you identify these two workers that --</p> <p>2 that are referred to in the sentence you read?</p> <p>3 MR. MILLER: I'm going to instruct the</p> <p>4 witness not to answer that question on the basis that</p> <p>5 the answer would tend to reveal the identities of</p> <p>6 confidential informants and that information is</p> <p>7 privileged.</p> <p>8 Q. (By Mr. Larkin) So the two workers who</p> <p>9 reached out to Casa Latina, did you yourself meet</p> <p>10 them?</p> <p>11 A. Yes.</p> <p>12 Q. So without saying who they are, you -- do</p> <p>13 you know who they are?</p> <p>14 A. Yes.</p> <p>15 Q. Did they provide -- or did you interview</p> <p>16 them as part of the investigation?</p> <p>17 A. Yes.</p> <p>18 Q. All right. So in that same paragraph where</p> <p>19 you read from looks like it says, "Casa Latina reached</p> <p>20 out to Investigator Williams and Harrison to</p> <p>21 potentially investigate the possible violations."</p> <p>22 So, again, Harrison is Ashley Harrison?</p> <p>23 A. That's correct.</p> <p>24 Q. So based on that sentence it looked -- did</p> <p>25 Casa Latina reach out directly to you and</p>	<p style="text-align: right;">Page 21</p> <p>1 Ms. Harrison?</p> <p>2 A. I can't recall if she did directly or not.</p> <p>3 She may have. We have a -- we have a rapport with her</p> <p>4 already, so --</p> <p>5 Q. Does Casa Latina -- or let's say did Casa</p> <p>6 Latina participate in this investigation?</p> <p>7 A. How so?</p> <p>8 Q. Did anyone from Casa Latina in any way work</p> <p>9 together with you or Ms. Harrison in this</p> <p>10 investigation?</p> <p>11 A. Providing translation they did.</p> <p>12 Q. Translation.</p> <p>13 Any -- any other thing -- any other -- any</p> <p>14 other way they participated?</p> <p>15 A. Maybe relaying some messages possibly.</p> <p>16 Q. Messages in writing?</p> <p>17 A. I can't remember. I think by phone.</p> <p>18 Q. Speaking more generally, what -- under what,</p> <p>19 say, legal authority does the OLS carry out these</p> <p>20 types of investigations?</p> <p>21 MR. MILLER: Objection. You're seeking a</p> <p>22 legal conclusion.</p> <p>23 Q. (By Mr. Larkin) Well, try to answer that if</p> <p>24 you can, Mr. Williams.</p> <p>25 A. Can you repeat the question?</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 26</p> <p>1 A. No. We attempted to, but he did not answer 2 our emails. 3 Q. So did anyone from the OLS have any 4 communication in any form with Mr. Contreras? 5 A. No, but we attempted to. 6 Q. Okay. 7 Why is it that OLS -- what -- why is it that 8 you believe that Mr. Contreras works for Baja 9 Concrete? 10 A. Given testimony just saying that he was 11 their manager from employees and then also too 12 documents we received his name is listed there as part 13 of the company. 14 Q. Can you be specific as to what documents 15 indicated that he was part of Baja? 16 A. I can't remember right now offhand -- 17 Q. Okay. 18 A. -- what documents there were. 19 Q. But that last part you read, that bullet 20 point there, "Workers report that one Newway 21 superintendent, Tony Machado, had signature direction 22 over Baja's workers and influence over Baja's 23 manager..." 24 So based on your understanding in your -- 25 the OLS investigation who or what entity was really</p>	<p style="text-align: right;">Page 27</p> <p>1 supervising the workers at the -- the Denny -- Denny 2 Way project site? 3 MS. KINCAID: Objection to the form of the 4 question. 5 MS. WOLFE: Join. 6 Q. (By Mr. Larkin) Please try to answer. 7 A. Largely Newway Forming. 8 Q. Is it your understanding -- is it your 9 understanding that Baja Concrete was supervising the 10 workers at the project site? 11 MS. KINCAID: Objection to the form of the 12 question. 13 Q. (By Mr. Larkin) Please try to answer. 14 A. It's kind of sort of -- it's kind of hard 15 because they're -- they're -- they're jointly doing 16 work together. So as you can read that second bullet 17 point there, "Workers at the site report that they 18 received their instruction directly from him," meaning 19 Antonio, "until spring of 2019." So then past that 20 time there Tony Machado would give directions to 21 Baja's manager, Roberto, and Roberto would talk to the 22 workers. So they were all jointly connected. 23 Q. Is it your understanding that Roberto worked 24 on-site or was present at the project site regularly? 25 A. After 2019 he was. Prior to that he was</p>
<p style="text-align: right;">Page 28</p> <p>1 not. 2 MR. LARKIN: By the way, it looks like, just 3 so everybody knows, Claudia Penunuri has joined the 4 call. She's the owner of Baja Concrete USA Corp. 5 She's observing the -- the deposition. Okay. 6 Q. (By Mr. Larkin) I'm going to page down to 7 the next page, which is the fourth page of this 8 document. So what -- what do we see here? What are 9 we looking at in this document? What -- what is this 10 section of the memo? 11 A. A list of violations we have -- that have 12 been alleged here. 13 Q. Okay. Right here, the first bullet point 14 where my cursor is here -- 15 A. Uh-huh. 16 Q. -- would you mind reading that, please. 17 A. Yes. "Workers worked from 50 to 75 hours a 18 week (depending on position) and were only paid 19 straight time for hours, often at hourly wages barely 20 exceeding Seattle minimum wage. There was never any 21 overtime pay given." 22 Q. How do you know that workers worked from 50 23 to 75 hours a week? 24 A. Two reasons how we know. One, based on 25 testimony from workers, and the second is the Baja</p>	<p style="text-align: right;">Page 29</p> <p>1 timesheets that was given to us by Newway Forming. 2 Q. Did you -- did you receive from Newway 3 Forming any time cards or timesheets of Newway Forming 4 as opposed to of Baja Concrete? 5 A. That was requested in our subpoena for all 6 parties, including Baja Concrete. We never received 7 any time cards. 8 Q. Is it your understanding that there are such 9 time cards? 10 A. There could be. I'm not sure. I never got 11 it. 12 Q. Did -- 13 A. Or an answer on it. 14 Q. Okay. 15 Did any of the workers that you -- that 16 the OLS interviewed or spoke with during the 17 investigation, did they report or indicate that there 18 were time cards or timesheets? 19 A. I believe so. I'd have to double-check the 20 interviews again, but I believe so. 21 Q. Okay. 22 Did any of the workers that you -- that the 23 OLS spoke with, did any of them say or indicate that 24 they would record extra hours to cover missed breaks 25 or missed -- missed rest periods?</p>



<p style="text-align: right;">Page 30</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. And, of course, where we see SMC here, is</p> <p>3 that the Seattle Municipal Code?</p> <p>4 A. 14.20, which is the wage theft ordinance.</p> <p>5 Q. And wage theft -- just explain briefly, what</p> <p>6 is meant by wage theft?</p> <p>7 A. It's an umbrella for a bunch of different</p> <p>8 violations considering kind of ways that -- for lost</p> <p>9 compensation, various different things such as, like</p> <p>10 you see here, the rest of it, for breaks, deductions,</p> <p>11 things of that nature.</p> <p>12 Q. Does that also include paying under the</p> <p>13 minimum wage or is that a different statute?</p> <p>14 A. Well, that would be considered the -- the</p> <p>15 minimum wage ordinance at that point.</p> <p>16 Q. Oh, okay. Yeah.</p> <p>17 Okay. Now I'm -- my cursor is down here to</p> <p>18 the third bullet point. Could you read that one?</p> <p>19 A. Yeah. "Workers were deducted rent, gas and</p> <p>20 parking from their paychecks every two weeks without</p> <p>21 being informed."</p> <p>22 Q. And what evidence do you have or does OLS</p> <p>23 have that the workers were not informed of these</p> <p>24 deductions?</p> <p>25 A. Through testimony.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. So for that purpose for that particular</p> <p>2 issue the OLS relies solely on what these workers say.</p> <p>3 A. In this context for this one here probably</p> <p>4 not. Later -- later on we asked about authorization</p> <p>5 forms for the deductions. Baja Concrete mentioned</p> <p>6 that they had no authorization forms for these</p> <p>7 deductions, which is required by state law.</p> <p>8 Q. State law or Seattle code?</p> <p>9 A. State.</p> <p>10 Q. Do you happen to know what statute that is</p> <p>11 just off the top of your head?</p> <p>12 A. It's in the finding. I don't know what it</p> <p>13 is right off.</p> <p>14 Q. It's in there. Okay.</p> <p>15 Okay. On the next page, the fifth page of</p> <p>16 this document, again do we see redactions on this</p> <p>17 page?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your understanding that all of</p> <p>20 these redactions are for the purpose of protecting</p> <p>21 person's identify -- identities?</p> <p>22 MR. MILLER: Objection; form of the</p> <p>23 question, foundation.</p> <p>24 Q. (By Mr. Larkin) I'll ask a different</p> <p>25 question. What is the purpose of these redactions?</p>
<p style="text-align: right;">Page 32</p> <p>1 A. The redactions, like I mentioned earlier,</p> <p>2 were based on the -- keeping the identities</p> <p>3 confidential of the workers who requested</p> <p>4 nondisclosure.</p> <p>5 Q. So it looks like we see two paragraphs here</p> <p>6 that are in -- that are completely redacted, correct?</p> <p>7 A. Yes.</p> <p>8 Q. But the only reason for these redactions is</p> <p>9 to protect identities?</p> <p>10 MR. MILLER: Objection to form of the</p> <p>11 question; lacks foundation.</p> <p>12 Q. (By Mr. Larkin) Try to respond.</p> <p>13 A. I believe so. I'm not sure exactly what</p> <p>14 this connects to exactly, these paragraphs, so I</p> <p>15 couldn't speak about that.</p> <p>16 Q. Okay.</p> <p>17 Down here near the bottom where the cursor</p> <p>18 is what -- what is this section of the memo about?</p> <p>19 A. It's me talking about the interviews being</p> <p>20 conducted.</p> <p>21 Q. Okay.</p> <p>22 And could you read that first short sentence</p> <p>23 there?</p> <p>24 A. "We conducted interviews with 8 employees."</p> <p>25 Q. Now, was that still -- at the conclusion of</p>	<p style="text-align: right;">Page 33</p> <p>1 the investigation was that still true or did you at</p> <p>2 some -- did OLS at some point interview more than</p> <p>3 eight employees?</p> <p>4 A. At the conclusion?</p> <p>5 Q. Yes.</p> <p>6 A. No. It's only eight.</p> <p>7 Q. Only eight.</p> <p>8 And -- and you're not going to provide the</p> <p>9 names of those eight people, are you?</p> <p>10 MR. MILLER: Same instruction to the</p> <p>11 witness. Alex, if you asked for identities, it will</p> <p>12 be the same instruction not to answer because the</p> <p>13 information's privileged.</p> <p>14 Q. (By Mr. Larkin) All right. I'll move on to</p> <p>15 the next page, I believe the sixth page of this</p> <p>16 document. Okay. If you can see my cursor again and</p> <p>17 you can read that sentence, please.</p> <p>18 A. "The interviews raised significant questions</p> <p>19 about whether the workers in reality worked for Newway</p> <p>20 with Baja as a mere pass-through."</p> <p>21 Q. Could you please explain the -- the basis</p> <p>22 for that state -- or that sentence.</p> <p>23 A. I believe this connects to the fact that the</p> <p>24 interviews we conducted, it seemed to me that learning</p> <p>25 through it the workers themselves, you know, talked</p>

<p style="text-align: right;">Page 46</p> <p>1 me -- that you -- or that were provided to OLS that</p> <p>2 are referred to here, were they provided by those</p> <p>3 first two workers that went to Casa Latina to report</p> <p>4 alleged violations?</p> <p>5 A. They may have. I don't know for sure. I</p> <p>6 can't remember.</p> <p>7 Q. Were these Whatsapp messages provided by any</p> <p>8 of the eight workers that the OLS interviewed in --</p> <p>9 during its investigation?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. Okay. I forgot to ask earlier, the two</p> <p>12 people that initially went to Casa Latina to allege</p> <p>13 violations, are they part of the eight who were</p> <p>14 interviewed by OLS during the investigation?</p> <p>15 A. Yes.</p> <p>16 Q. And in the sentence you just read, or one of</p> <p>17 the sentences you just read, part of it said they</p> <p>18 reported their hours worked to their Baja foreman.</p> <p>19 (Interruption.)</p> <p>20 (Discussion off the record.)</p> <p>21 MR. LARKIN: Sorry.</p> <p>22 Q. (By Mr. Larkin) They -- they reported their</p> <p>23 hours worked to their Baja foreman. Will you tell me</p> <p>24 who that Baja foreman was?</p> <p>25 A. That would be Roberto.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Roberto Soto Contreras?</p> <p>2 A. Contreras, yeah. Sorry.</p> <p>3 MR. MILLER: Hey, Alex --</p> <p>4 MR. LARKIN: Yeah.</p> <p>5 MR. MILLER: -- I'd like to take a break</p> <p>6 here for five or ten minutes shortly, but I -- you</p> <p>7 know, if you want to finish out a line of questioning</p> <p>8 or something, I don't mean to interrupt. Just --</p> <p>9 MR. LARKIN: Actually, I -- this is probably</p> <p>10 a good time because I'm finished now with this</p> <p>11 exhibit --</p> <p>12 MR. MILLER: Okay.</p> <p>13 MR. LARKIN: -- and we can come back and</p> <p>14 start with the next exhibit. So this would be a good</p> <p>15 time to take five or ten minutes.</p> <p>16 MR. MILLER: Can we do ten? Is that all</p> <p>17 right?</p> <p>18 MR. LARKIN: Sure. Fine with me.</p> <p>19 (Recess.)</p> <p>20 Q. (By Mr. Larkin) So now I'd like to introduce</p> <p>21 Exhibit No. 2, what's marked as Exhibit No. 2. Let me</p> <p>22 Share Screen again. Hang on. I'm trying to Share</p> <p>23 Screen, so just -- am I sharing screen? No.</p> <p>24 MR. MILLER: Not yet.</p> <p>25 Q. (By Mr. Larkin) Okay. Share Screen. Oh,</p>
<p style="text-align: right;">Page 48</p> <p>1 here. Share. Okay.</p> <p>2 Exhibit No. 2, does everybody see this?</p> <p>3 A. Yes.</p> <p>4 Q. So, Mr. Williams -- let me just scroll down</p> <p>5 a little bit here. I'll scroll -- scroll through it</p> <p>6 slowly at first here. Okay.</p> <p>7 Okay. Do you recognize this document,</p> <p>8 Mr. Williams?</p> <p>9 A. Yes.</p> <p>10 Q. What is this document?</p> <p>11 A. This is the notice of investigation and a</p> <p>12 request for information.</p> <p>13 Q. And who is the document from?</p> <p>14 A. From the Office of Labor Standards, City of</p> <p>15 Seattle.</p> <p>16 Q. And, just briefly, who is it addressed to?</p> <p>17 A. It's addressed to four different parties</p> <p>18 here, which is Baja Concrete USA, Roberto Contreras,</p> <p>19 Claudia Penunuri, and Carlos Penunuri.</p> <p>20 Q. And is this your name and signature on the</p> <p>21 letter?</p> <p>22 A. Yes.</p> <p>23 Q. And also that of Ashley Harrison, correct?</p> <p>24 A. Yes.</p> <p>25 MR. MILLER: Object --</p>	<p style="text-align: right;">Page 49</p> <p>1 A. That's correct.</p> <p>2 MR. MILLER: Sorry.</p> <p>3 Objection; form of the question, foundation.</p> <p>4 MR. LARKIN: Yeah.</p> <p>5 Q. (By Mr. Larkin) So what is the purpose of</p> <p>6 this letter?</p> <p>7 A. To notify the parties, the respondents in</p> <p>8 this case, what we're -- the investigation's about,</p> <p>9 what we're looking into, what violations we're looking</p> <p>10 into, and then informing them about retaliation and</p> <p>11 also informing them about there is a notice attached</p> <p>12 to this to Seattle employees that needs to be posted</p> <p>13 letting them know that this company is under</p> <p>14 investigation.</p> <p>15 Q. Would you mind, if you can see where my</p> <p>16 cursor is again here -- do you see my cursor?</p> <p>17 A. Yes.</p> <p>18 Q. Could you -- would you read that -- that</p> <p>19 first sentence there. Or that sentence there, please.</p> <p>20 A. "The Seattle Office of Labor Standards (OLS)</p> <p>21 has reason to believe that Baja Concrete USA Corp,</p> <p>22 Roberto Contreras, Claudia Penunuri and Carlos</p> <p>23 Penunuri Ibarra have violated Seattle Labor Standards</p> <p>24 Ordinances with respect to one or more employees and</p> <p>25 has initiated an investigation."</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. So why at this -- what is the date here on</p> <p>2 this -- what is the -- the date of this letter?</p> <p>3 A. May 22nd, 2020.</p> <p>4 Q. Okay.</p> <p>5 So as of that date why did the OLS have --</p> <p>6 or -- have reason to believe that these people at Baja</p> <p>7 Concrete had violated Seattle labor standards</p> <p>8 ordinances?</p> <p>9 A. This comes from interviews that we've</p> <p>10 conducted with the individuals, the workers.</p> <p>11 Q. Anything else?</p> <p>12 A. No. Not that I -- that I can think of.</p> <p>13 Q. And at that -- as of that date had all eight</p> <p>14 of those interviews been conducted or only some of</p> <p>15 them?</p> <p>16 A. I don't recall. I don't remember exactly</p> <p>17 how many had been done prior to that time.</p> <p>18 Q. I'm going to introduce now Exhibit No. 3,</p> <p>19 what's marked as Exhibit 3. Do you recognize this</p> <p>20 document?</p> <p>21 A. Yes.</p> <p>22 Q. And, again, it looks familiar. What -- what</p> <p>23 is this document?</p> <p>24 A. It's -- I'm guessing -- I don't see the</p> <p>25 whole entire thing, but I'm guessing the notice of</p>	<p style="text-align: right;">Page 51</p> <p>1 investigation as well.</p> <p>2 Q. Let me scroll through this here slowly.</p> <p>3 There may be some pages missing at the end of this,</p> <p>4 but -- okay.</p> <p>5 Does this appear to be essentially the same</p> <p>6 as Exhibit 2 we just looked at?</p> <p>7 A. I don't know if it's the same word for word.</p> <p>8 I'm not sure.</p> <p>9 Q. But it's -- it's addressed to different</p> <p>10 people at a different company than Exhibit 2 we just</p> <p>11 looked at, correct?</p> <p>12 A. Yes. That seems to be the case here, yeah.</p> <p>13 Q. Do you mind again now -- we won't spend much</p> <p>14 time on this, but where the cursor is would you read</p> <p>15 that sentence, please.</p> <p>16 A. "The Seattle Office of Labor Standards...</p> <p>17 has reason to believe that Newway Forming..." and</p> <p>18 "Antonio Machado, Salvatore Giantomaso, and Frank Cor"</p> <p>19 -- "Corona have violated Seattle Labor... Ordinances</p> <p>20 with respect to one or more employees and has</p> <p>21 initiated an investigation."</p> <p>22 Q. So is that sentence referring to the very</p> <p>23 same alleged violations that Exhibit 2 refers to in</p> <p>24 the same or similar sentence?</p> <p>25 A. Say that again? Sorry.</p>
<p style="text-align: right;">Page 52</p> <p>1 Q. Is this letter -- let's put it this way.</p> <p>2 I'll change the question. Exhibit 2 and Exhibit 3, so</p> <p>3 again here's Exhibit 2, Exhibit 3. Are they both</p> <p>4 referring to the same allegations of violations of</p> <p>5 labor ordinances?</p> <p>6 A. At the time, yes. We don't know -- we</p> <p>7 haven't uncovered everything yet in the investigation,</p> <p>8 but what we have uncovered so far initially, that's</p> <p>9 what it's about.</p> <p>10 Q. Okay.</p> <p>11 So Exhibit 2 identified Baja Concrete USA</p> <p>12 Corp. and three individuals, that letter, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And Exhibit 3, this letter, is it correct</p> <p>15 that this is addressed to Newway Forming, Inc., and</p> <p>16 three individuals?</p> <p>17 A. Yes. Seems to be the case here.</p> <p>18 Q. So at -- at least as of this point in time,</p> <p>19 looks like May 22nd, 2020, the OLS had reason to</p> <p>20 believe that two companies and six individuals had all</p> <p>21 violated Seattle labor ordinances, correct?</p> <p>22 A. We don't know that directly yet.</p> <p>23 Q. Is this your name and signature on the</p> <p>24 letter, Exhibit 3?</p> <p>25 A. Yes, it is.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. All right. I'll just move on then to the</p> <p>2 next exhibit, Exhibit -- what's marked as Exhibit 4.</p> <p>3 And let me do a scroll-through again on this one</p> <p>4 slowly.</p> <p>5 So, Mr. Williams, have you seen this</p> <p>6 document before?</p> <p>7 A. Yes.</p> <p>8 Q. What is this document?</p> <p>9 A. Subpoena.</p> <p>10 Q. And what is your understanding of -- you --</p> <p>11 based on your understanding, what is the purpose of</p> <p>12 this document?</p> <p>13 A. To retrieve information we never received in</p> <p>14 the request for information.</p> <p>15 Q. So the request for information, you're</p> <p>16 referring to the previous Exhibits 2 and 3 that we</p> <p>17 just looked at?</p> <p>18 A. I'm not sure if it's connected to both of</p> <p>19 those or any -- any more than that, but it's based off</p> <p>20 the initial request for information.</p> <p>21 Q. So describe this process. Your office --</p> <p>22 OLS sent out, delivered somehow those letters we</p> <p>23 looked at, Exhibits 2 and 3, which included notices of</p> <p>24 investigation and -- and requests for information.</p> <p>25 What -- what's the process from that point going</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 forward with what happened subsequent to those going 2 out? 3 A. Well, the companies have a chance to respond 4 back to us, and usually on a request for information 5 we have a due date, which is probably listed somewhere 6 on there, to respond back to us with the information 7 requested by. If they do not, then we typically 8 would, you know, follow up with -- 9 Q. With a subpoena? 10 A. Not -- not initially. 11 Q. Not initially. Okay. 12 So -- let's see here. What is the date of 13 this subpoena? 14 A. Would be July 16th of 2020. 15 Q. And I'm going to go back to Exhibit 3 just 16 briefly, the letter we looked at. The date on there, 17 is it May 22nd, 2020? 18 A. Yes. 19 Q. And the other letter, Exhibit 2, is that the 20 same date also? 21 A. Yes. 22 Q. Okay. 23 So between May 22nd of 2020 and the issuance 24 of this subpoena, Exhibit 4 -- back to Exhibit 4 -- 25 sorry -- did the OLS receive any information or</p>	<p style="text-align: right;">Page 55</p> <p>1 documents from Newway Forming? 2 A. I believe so, yes. 3 Q. Okay. 4 How about from Baja Concrete USA? 5 A. Between what date? Sorry. Want to make 6 sure I'm clear. 7 Q. So be -- between the letter that went out -- 8 A. Yeah. 9 Q. -- May 22nd, 2020, you know, essentially 10 informing these parties that OLS has started an 11 investigation or is requesting information and the -- 12 so between that date and the date of this subpoena, 13 July 16, 2020, did Baja Concrete provide any documents 14 or information to OLS? 15 A. Not to my knowledge, no. I don't think they 16 did. 17 Q. But Newway Forming did; is that correct? 18 A. I believe so, yes. 19 Q. How about Omni Contracting Washington Inc. 20 or Omni Group Inc.? Did they provide anything? 21 A. Yes, they did. 22 Q. Did you help prepare this subpoena, this 23 Exhibit 4? 24 A. Yes. 25 Q. In what way? Did you actually draft it?</p>
<p style="text-align: right;">Page 56</p> <p>1 MR. MILLER: I'm going to instruct the 2 witness not to answer this to the extent that it would 3 reveal attorney-client communications. I think there 4 are answers he can give, to be clear, Alex, that don't 5 fall in attorney-client communications, but as this is 6 a legal document, some of the answers would fall in 7 that. 8 And -- and maybe I -- again, Alex, I don't 9 mean to interrupt your deposition at all. 10 MR. LARKIN: Yeah. 11 MR. MILLER: Maybe the thing to do is to -- 12 I -- I'd be happy to talk to the witness to see what 13 kind of answer he can give that isn't revealing 14 communications he had with an attorney. 15 Alternatively, I'm not entirely sure how to 16 resolve this. I think there are probably some factual 17 interactions with the drafter of this that he had that 18 aren't about the communications. But given the nature 19 of the document, there -- you know, there's going to 20 have to be some separation. 21 MR. LARKIN: Yeah. That's okay. I don't 22 think I need to go any further in that direction. 23 Q. (By Mr. Larkin) Do you know how this 24 document was delivered or communicated to each of 25 these -- we'll call it the -- the recipients that it's</p>	<p style="text-align: right;">Page 57</p> <p>1 addressed to? 2 A. I can't remember exactly. It might have 3 been through a paralegal perhaps, but I -- I don't 4 know for sure. 5 Q. Do you know if this document, this subpoena, 6 was actually delivered to all of the recipients listed 7 on this page we're looking at? 8 A. In what form? You mean like a -- we have 9 a -- some kind of like a receipt back they received it 10 or what do you mean by that? 11 Q. Yeah. Thank you for that. 12 So does the OLS have documentation, say a 13 declaration or a certificate or a receipt or 14 something, to a -- to show that every one of these -- 15 or that each of these recipients received this 16 subpoena? 17 A. I don't know for sure. That's not in my 18 purview as far as what I control, so -- 19 Q. Does this document, the subpoena -- by the 20 way, it's a Subpoena Duces Tecum. Again, we're still 21 on Exhibit 4. Does this document inform -- the 22 recipients that are listed on the first page, does 23 this document inform them that they are entitled to 24 seek legal counsel? 25 A. I don't know if it does or doesn't.</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 70</p> <p>1 Q. Who -- who drafted it?</p> <p>2 A. I believe myself and Ashley did.</p> <p>3 Q. Okay.</p> <p>4 So if I understand correctly, you and Ashley</p> <p>5 Harrison interviewed Antonio Machado by telephone as</p> <p>6 part of your inves -- the OLS investigation, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Does this a -- does this document appear to</p> <p>9 be an accurate reflection of that interview?</p> <p>10 A. Seems to be.</p> <p>11 Q. So scrolling down to the second page of this</p> <p>12 Exhibit 6, the first question on this page, would you</p> <p>13 read that, please?</p> <p>14 A. "Explain in detail your daily duties at</p> <p>15 Newway."</p> <p>16 Q. And then just below that is Mr. Machado's</p> <p>17 response to that question?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 Would you mind reading that, please.</p> <p>21 A. "Each day I talk to my foreman in the</p> <p>22 morning, the labor foreman, carpenter foremen, cement</p> <p>23 finisher foreman, to keep Newway on the project</p> <p>24 schedule."</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 71</p> <p>1 So as part of the investigation, the OLS</p> <p>2 investigation in this matter, did the OLS contact the</p> <p>3 labor foreman referred to here?</p> <p>4 A. The labor foreman is not one person. It's</p> <p>5 multiple people probably.</p> <p>6 Q. Okay.</p> <p>7 Did OLS contact -- contact any labor foremen</p> <p>8 referred to here?</p> <p>9 A. I'm not sure.</p> <p>10 Q. Did OLS in its investigation contact any of</p> <p>11 the carpenter foremen referred to here?</p> <p>12 A. I'm -- I'm not sure.</p> <p>13 Q. Did OLS contact any of the cement finisher</p> <p>14 foremen referred to here?</p> <p>15 A. I'm not sure.</p> <p>16 Q. All right. Looking down on the same page,</p> <p>17 Exhibit 6, third question where my cursor is pointing</p> <p>18 here, so third question, what does that question say?</p> <p>19 Read that question, please.</p> <p>20 A. "Who directs your work?"</p> <p>21 Q. Again, what is -- what was Mr. Machado's</p> <p>22 response to that question?</p> <p>23 A. "I had a project manager, I look after the</p> <p>24 field and I had the PM working in the office. Before</p> <p>25 it was Chris Birtch, and for last year and a half" it</p>
<p style="text-align: right;">Page 72</p> <p>1 was "Tom Grant."</p> <p>2 Q. And so as part of the investigation did OLS</p> <p>3 contact Chris Birtch?</p> <p>4 A. No, we did not.</p> <p>5 Q. As part of the investigation did OLS contact</p> <p>6 Tom Grant?</p> <p>7 A. No, we did not.</p> <p>8 Q. Do you know who Chris Birtch is?</p> <p>9 A. Not directly, but I think on the website it</p> <p>10 was listed as a superintendent.</p> <p>11 Q. Superintendent for which company?</p> <p>12 A. For Newway Forming at the 1120 Denny Way</p> <p>13 site.</p> <p>14 Q. And Tom Grant, do you know who he is?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 I'm going to go down on the same -- sorry --</p> <p>18 the same document -- the pages are not actually</p> <p>19 numbered, so it's difficult -- okay. I'm sorry. At</p> <p>20 least we have a Bates stamp here. So I'm going to go</p> <p>21 down to number -- page number 1066 in this document,</p> <p>22 Exhibit 6. On this page -- one, two, three -- the</p> <p>23 fourth question on here, again, if you can see my</p> <p>24 cursor, can you read that question, please.</p> <p>25 A. "To your knowledge, were Baja Concrete</p>	<p style="text-align: right;">Page 73</p> <p>1 employees compensated for all the hours invoiced in</p> <p>2 these records?"</p> <p>3 Q. And just below that, what is apparently</p> <p>4 Mr. Machado's response, could you read that, please.</p> <p>5 A. "Newway paid everything from the invoices.</p> <p>6 Sometimes the guys worked through breaks, so if they</p> <p>7 worked through lunch you have to pay double, so</p> <p>8 they'd..." included "that in the hours they</p> <p>9 submitted."</p> <p>10 Q. So based on this -- again, that's not your</p> <p>11 statement; that's Mr. Machado's statement -- but it</p> <p>12 would appear that workers had to sometimes work</p> <p>13 through lunch, work through breaks, correct?</p> <p>14 MS. KINCAID: Objection to the form of the</p> <p>15 question; calls for speculation, lacks foundation.</p> <p>16 Q. (By Mr. Larkin) Please try to answer anyway.</p> <p>17 A. It seems to be from what he's saying here.</p> <p>18 Q. And that phrase there says, "...you have</p> <p>19 to pay double, so they'd include that in the hours</p> <p>20 they submitted." Does that -- based on your</p> <p>21 understanding of someone else's statement as far as</p> <p>22 your investigation does that mean that when they</p> <p>23 worked through breaks or worked through lunch they</p> <p>24 simply -- to compensate for that workers would simply</p> <p>25 add additional hours to their timesheets?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. "What is the process of calling in sick if 2 you needed to?"</p> <p>3 Q. And would you please read what apparently is 4 the response from the interviewee.</p> <p>5 A. "No process really, we would just call 6 Roberto and say I'm sick today and can't go."</p> <p>7 Q. I notice at the bottom there's no signature. 8 Do you -- do you know if OLS obtained a signed copy of 9 this from the interviewee?</p> <p>10 A. I don't know for sure if we did or not.</p> <p>11 Q. Is it the -- is it common practice of the 12 OLS to obtain signatures from interviewees?</p> <p>13 MR. MILLER: Objection to form of the 14 question; lacks foundation.</p> <p>15 Q. (By Mr. Larkin) Please try to answer that.</p> <p>16 A. Sometimes.</p> <p>17 MR. LARKIN: All right. Well, that's all I 18 have for that exhibit, so I guess we can take a lunch 19 break. Again, come back and -- I know it's a little 20 tedious, but I have to go through each of these 21 witness statements. So how about a lunch break?</p> <p>22 THE WITNESS: What time come back?</p> <p>23 MR. LARKIN: I don't know. How much -- how 24 much time do people want for lunch?</p> <p>25 MR. MILLER: Daron, do you have a</p>	<p style="text-align: right;">Page 87</p> <p>1 preference?</p> <p>2 THE WITNESS: I mean, it's 12:16. Is 3 one o'clock okay?</p> <p>4 MR. MILLER: That works me.</p> <p>5 MR. LARKIN: Works for me.</p> <p>6 MS. WOLFE: That works.</p> <p>7 MS. KINCAID: Yeah. That works for me too.</p> <p>8 MR. LARKIN: Okay. So we'll reconvene at 9 one o'clock. Thanks.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 (Deposition recessed at 12:17 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 88</p> <p>1 AFTERNOON SESSION 2 1:00 p.m. 3 February 3, 2022 4 EXAMINATION 5 (Continued) 6 BY MR. LARKIN: 7 Q. So I'll introduce the next exhibit marked as 8 Exhibit 9 and Share Screen. Okay. 9 So, Mr. Williams, do you see this document?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And, again, I'll scroll through it as we -- 12 Okay. Do you recognize this document, 13 Mr. Williams?</p> <p>14 A. Yes, I do.</p> <p>15 Q. What is -- what is this document?</p> <p>16 A. Interview statement.</p> <p>17 Q. And, again, is this a statement that was 18 prepared as part of the OLS investigation that we've 19 been discussing today?</p> <p>20 A. Yes.</p> <p>21 Q. And was this an interview of one of the 22 workers that we've been referring to?</p> <p>23 A. Looks to be, yes.</p> <p>24 Q. And who conducted this interview?</p> <p>25 A. I believe it was myself and Ashley.</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. And on what date was this interview on, 2 do you know?</p> <p>3 A. Looks like February 19th, 2020.</p> <p>4 Q. Do you recall whether this was done through 5 an interpreter?</p> <p>6 A. I can't remember.</p> <p>7 Q. Do you remember who that person was who you 8 were -- you and Ashley were interviewing?</p> <p>9 A. No.</p> <p>10 Q. Do you believe this is an accurate writing 11 of that interview and the responses to the interview 12 questions?</p> <p>13 A. Yes.</p> <p>14 Q. And, again, do we see information redacted 15 from this document?</p> <p>16 A. Yes.</p> <p>17 Q. And why was information redacted from this 18 document?</p> <p>19 MR. MILLER: Objection to form of the 20 question; foundation.</p> <p>21 Q. (By Mr. Larkin) Please answer anyway.</p> <p>22 A. To hide the identity of workers who request 23 nondisclosure.</p> <p>24 Q. Okay.</p> <p>25 So looking at the first page of this</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. (By Mr. Larkin) So on to page five of the</p> <p>2 same exhibit, still Exhibit 12, Bates stamp number</p> <p>3 1143, this question at line 5, would you read that</p> <p>4 question, please.</p> <p>5 A. "Who kept track of the hours you worked?"</p> <p>6 Q. And what was the -- at least the first line</p> <p>7 here of the -- the person's response?</p> <p>8 A. "Roberto kept track of the hours we worked."</p> <p>9 Q. Then further down on the same page at line</p> <p>10 19, this question, would you read this question,</p> <p>11 please?</p> <p>12 A. "What is the process of calling in sick if</p> <p>13 you needed to?"</p> <p>14 Q. And what was the person's response to that</p> <p>15 question?</p> <p>16 A. "If I was sick I would tell Roberto."</p> <p>17 Q. I'll introduce the next exhibit, which is</p> <p>18 marked as Exhibit 13, and I'll scroll through this</p> <p>19 one.</p> <p>20 Do you recognize this document,</p> <p>21 Mr. Williams?</p> <p>22 A. Yes, I do. I've seen it before.</p> <p>23 Q. You've seen it before? What is this</p> <p>24 document?</p> <p>25 A. It's an interview statement, notes.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Did you participate in this interview?</p> <p>2 A. I don't know.</p> <p>3 Q. So you don't know whether you were present</p> <p>4 for this interview?</p> <p>5 A. No, I don't know.</p> <p>6 Q. But you have seen it before you said.</p> <p>7 A. I've seen this document before, yes.</p> <p>8 Q. And in what -- what -- in what context have</p> <p>9 you seen this?</p> <p>10 A. What do you mean?</p> <p>11 Q. Did you see this as part of the OLS</p> <p>12 investigation into Baja Concrete and the other</p> <p>13 parties?</p> <p>14 A. Yes.</p> <p>15 Q. Do you believe -- well, is this a -- is this</p> <p>16 interview notes from an interview of a worker?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay.</p> <p>19 But based on your knowledge and the fact of</p> <p>20 what you've seen of this document is this -- or was</p> <p>21 this an interview that was done as part of the OLS</p> <p>22 investigation that we've been discussing?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 I'm going to scroll down to the third page</p>
<p style="text-align: right;">Page 108</p> <p>1 of this document, which is Bates stamp 1134. Okay.</p> <p>2 So down here at line 22 on this page could you read</p> <p>3 that question, please?</p> <p>4 A. "Who directed your work?"</p> <p>5 Q. And would you read the person's response,</p> <p>6 please.</p> <p>7 MS. KINCAID: Object to the form of the</p> <p>8 question; calls for hearsay and lacks foundation.</p> <p>9 And then, Alex, could we agree to another</p> <p>10 standing objection as --</p> <p>11 MR. LARKIN: Yes.</p> <p>12 MS. KINCAID: -- far as any responses?</p> <p>13 Okay.</p> <p>14 MR. LARKIN: Yeah.</p> <p>15 MS. KINCAID: Thank you.</p> <p>16 MR. LARKIN: That's fine.</p> <p>17 MS. WOLFE: Join.</p> <p>18 Q. (By Mr. Larkin) Would you please read the</p> <p>19 response to that last question, Mr. Williams.</p> <p>20 A. "Ivana, the jefe. Roberto was just the guy</p> <p>21 that hired us."</p> <p>22 Q. Again, that -- is that a reference -- do you</p> <p>23 understand that to be a reference to Roberto Soto</p> <p>24 Contreras?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And then move on to the next page of the</p> <p>2 same exhibit. At about page -- at line 9, rather,</p> <p>3 could you read that question, please.</p> <p>4 A. "Who hired you?"</p> <p>5 Q. Could you read the response that question.</p> <p>6 A. "Roberto."</p> <p>7 Q. I'm going to move to the next page of the</p> <p>8 same document, so that's Bates stamp 1136. Would you</p> <p>9 read the first question on that page, please.</p> <p>10 A. "Who told you when it was break time?"</p> <p>11 Q. And would you read the first sentence of the</p> <p>12 response, please.</p> <p>13 A. "Since we were working there under Newway,</p> <p>14 Newway would tell us when the" -- "the breaks were" --</p> <p>15 "were." Sorry.</p> <p>16 Q. And then further down on the same page at</p> <p>17 about line 10 could you read that question?</p> <p>18 A. "What was the process of calling in sick if</p> <p>19 you needed to?"</p> <p>20 Q. And would you read the response, please.</p> <p>21 A. "I would tell Roberto, but sometimes I would</p> <p>22 call Ivano, the Newway boss. They wouldn't pay us the</p> <p>23 day."</p> <p>24 Q. Okay. We'll move on and introduce the next</p> <p>25 exhibit, which is marked as Exhibit 14. I'll scroll</p>

<p style="text-align: right;">Page 126</p> <p>1 I would like you to read into the -- for the record  2 here where -- basically it appears there's a list here  3 or a description of documents and other things that  4 were -- well, it's evidence that was reviewed in this  5 case. So would you mind reading in here if you can  6 see my cursor where it says, "OLS...", if you would  7 read that -- that section, including the bubble points  8 listing the items there?  9 A. OLS submitted written Requests for  10 Information to Respondents, as is its standard  11 practice, and issued a Subpoena's "Duces Tecum when it  12 did not receive complete and timely responses from all  13 Respondents. As such, evidence reviewed in this case  14 also includes the following documents.  15 Written responses to Requests for  16 Information from Respondents Baja Concrete and Newway  17 Forming.  18 Written responses to a Request for  19 Information from Omni Contracting (Washington) Inc.  20 prior to its dismissal from the case, along with a  21 copy of the contract between Omni Contracting  22 (Washington) Inc. and Newway Forming.  23 Payroll records provided by Baja Concrete.  24 Newway Forming produced copies of Baja  25 Concrete's invoices for payment, along with the</p>	<p style="text-align: right;">Page 127</p> <p>1 underlying timesheets from the 1120 Denny Way site and  2 two additional worksites in Seattle. The timesheets  3 show the daily hours of work for Baja Concrete  4 employees, on a Sunday through Saturday weekly  5 calendar basis and reflecting two work weeks in each  6 pay period/invoice period. The documents date from  7 November 2018 to early June of 2020.  8 Text message's records" -- "records from  9 workers showing the hours they tracked and  10 self-reported to Baja Concrete."  11 Q. Okay.  12 I have not seen those text message records.  13 Does OLS have a copy of those text message records?  14 A. I -- I don't know.  15 Q. And in here we see timesheets from the  16 1120 Denny Way site and two additional worksites.  17 Okay. So those two additional worksites, those are  18 the ones you mentioned, Terry Avenue and Fairview  19 Avenue?  20 A. Yes. That's correct.  21 Q. Okay. Looking at page three of the same  22 Exhibit 16 under "FIND" -- there's a section here  23 called "FINDINGS OF FACT." Do you see that?  24 A. Yes.  25 Q. So just I guess in your own words what does</p>
<p style="text-align: right;">Page 128</p> <p>1 this mean? What does -- this section called "FINDINGS  2 OF FACT," what does that -- what is it?  3 A. Evidence that we collected throughout the  4 course of our investigation that we found that is --  5 seems to be factual, not based on any con -- any law  6 conclusions.  7 Q. Okay.  8 Were some of the findings of fact based on  9 missing information or a lack of information?  10 A. I don't know. Might be incomplete  11 information possibly.  12 Q. Incomplete information?  13 Do you believe that -- that O -- in this  14 investigation OLS was -- do you believe that OLS was  15 provided with complete documentation regarding payment  16 of wages of the workers?  17 A. I don't know if we received everything we've  18 asked for. For payment of wages that is.  19 Q. And how about for break times, rest times?  20 Did you receive -- or did OLS receive complete  21 information regarding those things?  22 A. Like what kind of information are you  23 looking for for break or rest times?  24 Q. I think you would know better than me, but  25 perhaps time cards and timesheets of workers where it</p>	<p style="text-align: right;">Page 129</p> <p>1 would show their -- you know, when they went on a  2 break and came back from a break or something like  3 that?  4 A. I did not receive that as we -- as we  5 requested it.  6 Q. Okay.  7 So you requested that information but did  8 not receive it.  9 A. That's correct.  10 Q. Did you receive in this investigation either  11 from Newway or from Baja Concrete any documentation or  12 evidence to show like a record of sick leave taken by  13 workers?  14 A. No, we did not, but it was requested.  15 Q. Okay.  16 Okay. So under this "FINDINGS OF FACT"  17 section here would you mind reading the second  18 paragraph here.  19 A. "Res" --  20 MS. KINCAID: And I'm just going to object  21 to the form of the question as to lack of foundation.  22 A. "Respondent Roberto Soto Contreras acted as  23 a hiring manager and representative of Baja Concrete.  24 Roberto Soto Contreras exercised significant control  25 over the workers and their pay; their Paid... and --</p>



<p style="text-align: right;">Page 178</p> <p>1 MR. MILLER: Objection; form of the 2 question. It's argumentative. 3 MR. LARKIN: Yeah. That was not -- that was 4 not a question. 5 Q. (By Mr. Larkin) All right. Just to kind of 6 summarize a little bit here, not specific to this 7 exhibit anymore -- in fact, I'll close -- well, no, 8 I won't. 9 Did Baja Concrete USA Corp. control the 10 activities of the workers at the Denny Way project? 11 MS. KINCAID: Objection to the form of the 12 question; calls for a legal conclusion, lacks 13 foundation. 14 MS. WOLFE: Join. 15 A. In what way? 16 Q. (By Mr. Larkin) In any way. Did anyone -- 17 MS. KINCAID: Same -- 18 Q. (By Mr. Larkin) -- from -- did anyone from 19 Baja Concrete USA Corp. instruct the workers at the 20 Denny Way -- 1120 Denny Way worksite about their work 21 activities -- 22 MS. KINCAID: Object to -- 23 Q. (By Mr. Larkin) -- what to -- 24 MS. KINCAID: -- the form -- 25 Q. (By Mr. Larkin) -- do -- what to do,</p>	<p style="text-align: right;">Page 179</p> <p>1 what time to take a break, what time to take lunch, 2 et cetera. 3 MS. KINCAID: Object to the form of the 4 question; calls for a legal conclusion, lacks 5 foundation. 6 MS. WOLFE: Join. 7 Q. (By Mr. Larkin) Please try to answer. 8 A. Yeah. 9 Q. Yeah? 10 Who -- who from Baja Concrete was at the 11 site directing the workers? 12 A. Roberto. 13 MS. KINCAID: Objection to form of the 14 question; calls for a legal opinion and lacks 15 foundation. 16 Q. (By Mr. Larkin) You said Roberto, correct? 17 A. Roberto Contreras, yes. 18 Q. Okay. 19 He -- is it your understanding that he was 20 there most of the time or just occasionally or what's 21 your understanding? 22 A. This is kind of going back to what we talked 23 about the first time, but -- and this is -- he wasn't 24 there as much prior to 2019, in the spring of 2019. 25 After that he was on -- there on-site the majority of</p>
<p style="text-align: right;">Page 180</p> <p>1 the time. 2 Q. Is it your understanding that Baja Concrete 3 USA Corp. determined the pay rates, the hourly rates 4 or -- well, the wages of the workers? 5 A. I -- well, they didn't really get paid an 6 hourly rate, but they had like a piece rate on 7 their -- on their pay stubs. So we had to determine 8 the hourly rates for them because it wasn't listed. 9 And they weren't paid by piece rate either. So they 10 determined their pay, yes. 11 Q. Is it your understanding that Baja Concrete 12 USA Corp. recruited, hired, and fired workers? 13 A. Yes. 14 Q. And that's based on somebody's testimony? 15 A. Yes. 16 Q. Who -- whose testimony? Don't say the name, 17 but what -- workers' testimony? 18 A. I believe so, yeah. 19 Q. Is it your understanding that -- that all of 20 these workers, at least 53 that are listed on this -- 21 this exhibit, is it your understanding that all of 22 these workers worked for Baja Concrete USA Corp.? 23 A. To the best of my knowledge, yes. 24 Q. Is it your understanding that the workers at 25 the project site on Denny Way while they were</p>	<p style="text-align: right;">Page 181</p> <p>1 performing their work there that they -- is it your 2 understanding that they were using equipment owned by 3 Baja Concrete USA Corp.? 4 A. I don't know. 5 Q. So if these workers -- if they are employees 6 of Baja Concrete, is it your understanding that their 7 working relationship is a permanent or long-term 8 relationship? 9 A. I don't know. 10 Q. All right. I'm going to go to my last 11 exhibit, which is a spreadsheet, which I -- ah. Here 12 it is. Am I still sharing? I -- do you see this 13 spreadsheet, Daron? 14 A. Yeah, I -- 15 Q. Excuse -- 16 A. -- do. 17 Q. -- me. Mr. Williams. 18 Let me go to the top here. There's a lot 19 here. I'll scroll down just so you get a look at at 20 least most of it. This is marked as Exhibit 17, if I 21 didn't mention that. 22 Okay. Sorry. Do you recognize this 23 document, Mr. Williams? 24 A. Yes, I do. 25 Q. Did you -- did you prepare this spreadsheet?</p>

<p style="text-align: right;">Page 206</p> <p>1 Q. Okay.</p> <p>2 And in looking at this email do you see</p> <p>3 where my cursor is, this number 3. here?</p> <p>4 A. Yep.</p> <p>5 Q. And you had referred earlier in your</p> <p>6 testimony that you had had some evidence that Roberto</p> <p>7 Soto worked for Baja Concrete. So I wanted to ask,</p> <p>8 is -- is this one of those pieces of evidence that you</p> <p>9 were referring to?</p> <p>10 A. That he worked for Baja Concrete?</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 And then I'm going to pull up this next</p> <p>15 document, which I'm labeling as Exhibit 19. Can you</p> <p>16 see that, Mr. Williams?</p> <p>17 A. Yes.</p> <p>18 Q. And do you see this Bates stamp number at</p> <p>19 the bottom, 0985?</p> <p>20 A. Yes.</p> <p>21 Q. Do you -- do you recognize this document?</p> <p>22 A. Yes.</p> <p>23 Q. And what is it?</p> <p>24 A. It's a business card for Baja Concrete USA.</p> <p>25 Q. And -- so you said you -- you recognize this</p>	<p style="text-align: right;">Page 207</p> <p>1 document. Where -- where have you seen this document</p> <p>2 before?</p> <p>3 A. I'm not sure where we acquired it from, but</p> <p>4 I have seen it before.</p> <p>5 Q. Okay.</p> <p>6 So you don't know how this document came to</p> <p>7 be in OLS' file?</p> <p>8 A. I don't --</p> <p>9 MR. LARKIN: Object --</p> <p>10 A. I don't know.</p> <p>11 MR. LARKIN: I object to the form of the</p> <p>12 question, just object to this document being</p> <p>13 introduced. I think that Mr. Williams is not a -- in</p> <p>14 a position to testify regarding this document. But</p> <p>15 continue anyway.</p> <p>16 Q. (By Ms. Kincaid) Mr. Williams, so I know you</p> <p>17 said you've seen this document before. Did you see it</p> <p>18 in OLS' file?</p> <p>19 A. It was part of our case file for this</p> <p>20 investigation, yes.</p> <p>21 Q. Okay.</p> <p>22 And does this business card indicate that</p> <p>23 Roberto Soto Contreras worked for Baja Concrete USA?</p> <p>24 MR. LARKIN: Object to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">Page 208</p> <p>1 A. Yeah.</p> <p>2 Q. (By Ms. Kincaid) Okay, Mr. Williams. This</p> <p>3 is the last document that I want to ask you about.</p> <p>4 I've got it marked as Exhibit 20. And can you see</p> <p>5 this here?</p> <p>6 A. Yes, I can.</p> <p>7 Q. And then scrolling down do you see the Bates</p> <p>8 stamp at the bottom, 0989?</p> <p>9 A. Yep.</p> <p>10 Q. Perfect.</p> <p>11 Have you seen this document before?</p> <p>12 MR. LARKIN: I object --</p> <p>13 A. Yes.</p> <p>14 MR. LARKIN: -- to the form of the question.</p> <p>15 A. Yes, I have.</p> <p>16 Q. (By Ms. Kincaid) And where have you seen</p> <p>17 this document before?</p> <p>18 A. It --</p> <p>19 MR. LARKIN: Same --</p> <p>20 A. -- was in our case file.</p> <p>21 MR. LARKIN: Same objection.</p> <p>22 Q. (By Ms. Kincaid) And what is this document?</p> <p>23 MR. LARKIN: Same objection.</p> <p>24 A. I don't know. We're -- we're trying to</p> <p>25 figure that out, so --</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. (By Ms. Kincaid) Do you know how this</p> <p>2 document came to be in OLS' file?</p> <p>3 A. I don't know offhand right now.</p> <p>4 Q. Is that something that OLS would be able to</p> <p>5 determine?</p> <p>6 A. I don't know exactly. May -- possibly my</p> <p>7 other co-investigator might know, so --</p> <p>8 Q. And your co-investigator, you're referring</p> <p>9 to Ms. Harrison?</p> <p>10 A. Yeah. But I'm not sure she knows either, so</p> <p>11 I'm not sure exactly.</p> <p>12 Q. And, Mr. Williams, did you review the</p> <p>13 invoices that Baja Concrete submitted to Newway</p> <p>14 Forming?</p> <p>15 A. Yes. Not all of them, though.</p> <p>16 Q. Okay.</p> <p>17 But you have seen some of them.</p> <p>18 A. Yeah.</p> <p>19 Q. And to your understanding, did Baja Concrete</p> <p>20 submit invoices to Newway at a per hour rate more than</p> <p>21 what the Baja payroll was showing the workers were</p> <p>22 being paid?</p> <p>23 A. Hard to tell because there's no hourly rate</p> <p>24 listed on the Baja payroll, so I couldn't tell if it</p> <p>25 actually was getting paid that amount or not. But</p>

<p style="text-align: right;">Page 210</p> <p>1 some invoices did not include hourly rates for people.  2 It just had a final figure amount, so --  3 Q. And those were the rates that -- that Baja  4 was invoicing to Newway.  5 A. Yes.  6 Q. And those rates that Baja was invoicing to  7 Newway, were they higher than the rates that the  8 evidence indicates the workers were receiving per  9 hour?  10 A. Yeah. It was higher.  11 Q. They were higher. Okay.  12 So assuming Newway actually paid that amount  13 to Baja, Baja was getting more money based on that  14 than what workers were being paid per hour.  15 A. I don't know.  16 Q. And what would that indicate to you if a  17 company was receiving more per hour for work that  18 their laborers were doing, that their workers were  19 doing, than what it was paying to its workers?  20 MR. MILLER: Object to the form of the  21 question. It's a hypothetical.  22 A. I -- I don't know.  23 Q. (By Ms. Kincaid) Bear with me one minute,  24 Mr. Williams. I'm just trying to see if I have any  25 more questions for you.</p>	<p style="text-align: right;">Page 211</p> <p>1 MS. KINCAID: Okay. I don't have anything  2 additional at this time.  3 Nicole, I'll turn it over to you if you have  4 any questions.  5 MS. WOLFE: Yes. Thank you. I will keep  6 this pretty short.  7 E X A M I N A T I O N  8 BY MS. WOLFE:  9 Q. My name's Nicole Wolfe and I represent  10 Newway Forming.  11 Turning back to the witness statements that  12 we've been talking a lot about today, were all those  13 interviews conducted by phone?  14 A. No.  15 Q. So there were some in person as well?  16 A. I believe they were all in person.  17 Q. Oh. So none of them were conducted by  18 phone.  19 A. I don't think so. Well, let me -- all the  20 statements? No. I don't --  21 Q. Yes.  22 A. I take that back. No. Some of them were by  23 phone. Sorry.  24 Q. Of the eight witness statements, how many  25 were by phone and how many were in person?</p>
<p style="text-align: right;">Page 212</p> <p>1 A. I can't remember the exact number.  2 Q. Was it close to 50/50?  3 A. More than in person than it was over the  4 phone.  5 Q. Okay.  6 And so when the interview was occurring  7 during the in-person interviews it would be you, maybe  8 Ashley Harrison, maybe an interpreter, and then the  9 interviewee, correct?  10 A. That's correct.  11 Q. Anyone else in the room?  12 A. No.  13 Q. Okay.  14 And are you typing the responses to the  15 questions on a computer?  16 A. Depends on who is giving an interview, so --  17 yeah.  18 Q. Okay.  19 So if Ashley Harrison is giving the  20 interview, would you be typing the responses? Is that  21 kind of what you'd -- how that --  22 A. That's correct.  23 Q. -- would look like?  24 A. Yes.  25 Q. Okay.</p>	<p style="text-align: right;">Page 213</p> <p>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</p>

## MEMO

DATE: 4/2/2020 (last updated 5/18/2020)  
TO: Case File  
FROM: Daron Williams and Ashley Harrison  
RE: Baja Concrete case summary  
Case No. CAS-2020-00186

---

This is a living document summarizing the Baja Concrete investigation filed on May XX, 2020.

### I. Intake

During the week of January 6<sup>th</sup> two workers reached out to Casa Latina speaking of possible labor violations at a company called Baja Concrete. They mentioned that the majority of their work was in Seattle at a construction site building sky rise condos which (at the time) employed around 20 people. Casa Latina reached out to Investigator Williams and Harrison to potentially investigate the possible violations.

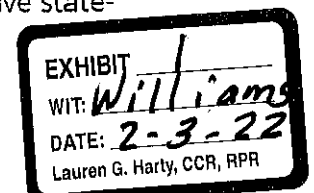
Prior to coming to OLS, the workers

[REDACTED] confirmed that she had submitted a draft 'recommendation of compliance' to her supervisor, [REDACTED]

which the workers in turn provided to us, and we identified through those documents' multiple discrepancies and possible violations. [REDACTED]

[REDACTED] clearly showed deduction lines for Tools, Loan, and 'Advance R', directly contradicting Baja's response to the L&I employer questionnaire indicating that it did not deduct for any purpose outside of taxes and medical benefits.

Casa Latina and Office of Labor Standards (OLS) began an intake process to learn more about the alleged violations. OLS developed an intake form to use primarily for construction cases to help narrow down allegations of violations that were applicable to our office and jurisdiction. Using previous knowledge, we determined that in the construction industry the majority of the work done by employees typically involve state-wide work.



## II. Research (companies and individuals involved)

See also [REDACTED]

**Baja Concrete USA Corporation – Baja appears to be a small company in terms of its US operations, with perhaps 30 workers locally; we have not found any information that it conducts work in this area independently of Newway Forming, though it does work with Newway at several Seattle-area sites run by different general contractors. Its size in Canada is unknown to us, nor do we know if it operates elsewhere in the US.**

Baja Concrete USA Corporation is the employer of record for the workers we interviewed. Baja Concrete set the rate of pay; tracked work hours; recruited, hired, and fired workers; transported workers to the job site; arranged for their housing; deducted housing and transportation costs from their paychecks; submitted falsified W-4s on behalf of the workers misrepresenting their number of dependents to minimize tax withholding; and contracted with the payroll company.

- Roberto Soto Contreras
  - Roberto recruited workers and arranged their housing, retained workers' identity documents, hired and fired workers, allegedly threatened to them with deportation, transported them to the job site, submitted falsified W-4s, and tracked hours worked and gave instructions to the payroll provider.
- Carlos Penunuri Ibarra
  - Carlos is listed as a governing person for Baja Concrete USA Corp, along with his sister Claudia Penunuri, per WA SoS. Carlos is also listed in the Florida SoS articles of incorporation as Vice President for Baja (but not as a governing person.)
- Claudia Penunuri
  - Claudia is listed as a governing person for Baja Concrete USA Corp in Washington State; in Florida, she is listed as the sole governing person; the articles of incorporation in Florida list her as the company president.

**Newway Forming – based in Vancouver, B.C. and operates in a number of cities in Canada and the US, including Vancouver and its suburbs, Seattle, Bellevue, Lynnwood Edmonton, Calgary, San Diego, and more. Newway was founded over 30 years ago and reports having over 500 site workers worldwide. Newway also has an office in Lynnwood, WA. They seem to work with large developers including Onni and Bosa. In 2019, Washington State site safety inspections of Newway identified violations on five out of six occasions across multiple locations, including violations classified as 'repeated serious'.**

Newway superintendents and foremen directed Baja workers without an intermediary foreman at multiple job sites in Seattle and Bellevue.

Workers report that Newway determined the timing, frequency, and duration of their meal and rest breaks.

Workers report being asked by Newway foremen to work additional hours at several sites.

- **Antonio (Tony) Machado**
  - Tony Machado is one of two Newway superintendents at Onni's 1120 Denny site. He listed on Newway's website as such.
  - Workers at that site report that they received their instructions directly from him until spring of 2019, when Tony instructed Roberto to start reporting daily to the 1120 Denny to direct the workers.
  - Workers report that one Newway superintendent, Antonio Machado, had significant direction over Baja's workers and influence over Baja's manager, Robert Soto Contreras, and that they have reason to believe that he profits personally from the misappropriated wages.
- **Salvatore Giantomaso**
  - Salvatore is the Vice-President of Newway Forming and is one of two owners for the company. He is listed as a governing person for Newway in the WA SoS database.
  - According to Newway's website, "Salvatore is directly involved in all the operations in Calgary and Seattle."
  - Workers testify that Salvatore personally visited the One88 Bellevue worksite.
- **Franco Corona**
  - Newway's website lists Franco Corona as the General Manager and notes, "He has the overall responsibility for daily project management and field operations; tendering of projects and regular contact with all site superintendents. He is directly involved in the coordination of the crews, scheduling and cost control and leads the valued engineering analysis reviews during design developments."

### **Onni Contracting (Washington) Inc.**

Onni Group is the developer for the 1120 Denny Way project, and is acting as its own contractor ('prime contractor') on this project through the entity 'Onni Contracting (Washington) Inc.' As the prime contractor, Onni sets the overall project schedule and is responsible for safety protocols for all workers on the site. Onni Contracting (Washington) Inc. is governed by Rossano, Giulio, and Morris De Cotiis, all of whom are highly-placed officers of Onni Group.

**Onni Group** - Onni Group is a privately held company whose ownership appears to overlap closely with the governors of Onni Contracting (Washington) Inc.

See profile at Bellevue Downtown Association here -

<https://www.bellevuedowntown.com/go/onni-group>. "Their expertise expands across North American cities such as Los Angeles, Seattle, Chicago, Phoenix, Toronto, and

Vancouver. Onni has constructed over 15,000 new homes, owns and manages more than 7,200 rental apartments, has built more than 10.5 million square feet of office, retail, and industrial space, and has an additional 28 million square feet of space in different phases of development. Employing thousands of people across North America, Onni is one of the continent's largest and most established developers of real estate."

CoS Accela (SDCI) records show Onni Group as the applicant for multiple temporary noise variance permits on behalf of Onni Contracting (Washington) Inc. This indicates that Onni Group played a direct role in coordination of worksite activities, in addition to the fact that Onni Group and Onni Contracting (Washington) Inc share a significant number of overlapping company owners/officers.

**\*\*NOTE:** In 2018, Onni Group attempted to purchase and redevelop the Showbox property into a residential high-rise building, but the deal was blocked by Council's legislation to add the Showbox to the Pike Place Market Historical District. The City of Seattle recently settled a lawsuit with the building owner. Onni Group was not party to the lawsuit, and we do not know if Onni Group contacted, lobbied, or developed relationships with Seattle electeds during this time.

### III. Violations

Some of the alleged violations we identified were:

- No overtime pay (SMC 14.20)
  - o Workers worked from 50-75 hours a week (depending on position) and were only paid straight time for hours, often at hourly wages barely exceeding Seattle minimum wage. There was never any overtime pay given.
- Inconsistent pay for breaks and lunches (SMC 14.20)
  - o There were instances where workers would get breaks, but it depended on the job duty for the day. For example, if they weren't putting down concrete, they would get the normal allotted breaks, but if they weren't more than likely they didn't receive breaks. Additionally, the 30 minute break/lunch they would receive would be the same if they worked 8 hours or 14. In that case employees routinely missed second breaks/lunches.
- Illegal deductions from workers' pay (SMC 14.20)
  - o Workers were deducted rent, gas and parking from their paychecks every two weeks without being informed.
- Inconsistency of workers receiving any stubs. (SMC 14.20)
  - o Through testimony that some workers received pay stubs some of the time or not at all.
- No Paid Sick and Safe Time (PSST) (SMC 14.16)

- o Employees stated in interviews that they didn't receive any PSST.

In addition to allegations of Seattle labor ordinances violations, [REDACTED]

#### IV. Interviews

We conducted interviews with 8 employees. The majority of the employees speak Spanish, so all of our interviews conducted involved an interpreter present. Through the interview process, workers began to organize other workers to interview with OLS.



We also discovered through interviews that workers were being deducted gas, parking and rent (for some employees) each pay period.

- Prior to Roberto's time on site acting as foreman (Nov 2018 – May 2019), the workers received all instructions from Newway foremen directly – Tony, Pedro, Victor, Ivano, and Mateo.
- Even after Roberto began working on-site, one worker testified that if he was sick, he would alert Roberto and [REDACTED] both, and that [REDACTED] was also in charge of letting the workers know when to come in to start work and where within the site to work each day, and had disciplinary authority. ([REDACTED] was the foreman for the laborers at 1120 Denny Way.)
- The workers report that Tony eventually instructed Roberto that he must start reporting to the site as the foreman for this crew. Workers also report that even after Roberto came on-site, he took all of his instruction directly from Tony and that the two coordinated closely on hiring and firing decisions, and that Tony attempted to discourage Newway foremen at other sites from hiring Baja workers.
- When the workers reported to other sites (One88, Fairview, Terry) Roberto was never present and no other Baja foreman was identified. Workers were often dispatched to these sites in crews of 1-2 people only; the majority of the crew consistently worked at 1120 Denny Way, Tony Machado's site.

100

**Figure 1**

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b1  
b2  
b7C

[REDACTED]

## VI. Investigation Challenges

- Complexity of responding parties

- ## VII. Initial RFI and NOI

[illegible]

### 1120 Denny Way Timesheets

In response to our SDT (primarily directed at Baja Concrete USA Corp but naming all respondents) Newway Forming produced copies of Baja Concrete's invoices for payment, along with the underlying timesheets from the 1120 Denny Way site. The timesheets show the daily hours of work for Baja Concrete employees at this worksite, 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.

[REDACTED] of these timesheets and used them as the primary basis for our calculations in regard to hours worked per employee. Though we were initially concerned that there may have been changes made to the hours worked (e.g. time shaving or other issues) because the invoiced timesheets show the same handwriting representing each worker's hours, evidence suggests that the invoiced timesheets with consistent handwriting were created to consolidate information from different crews or portions of the worksite, not to modify or short-change the hours. See note below, EE-Provided Timesheet.

Furthermore, the invoiced timesheets strongly corroborated the workers' testimony regarding their hours worked, and the timesheets closely aligned with the evidence provided to us by employees:

- **Whatsapp Records of Hours Worked:** The timesheets which Baja submitted to Newway corroborate the evidence which the workers provided to us in the form of Whatsapp messages

where they reported their hours worked to their Baja foreman. Their process was to write out their hours worked in each pay period, photograph that handwritten record, and text the image to the foreman via Whatsapp. [REDACTED]

[REDACTED] compared to the full span of invoiced timesheets, every single spot check we conducted showed alignment between what the workers recorded and what Baja invoiced Newway. [REDACTED] Add screenshot name here.)

- **L&I Calendar of Hours Worked:** The timesheets also correspond to the calendars of hours which Baja workers filled out and submitted to L&I as part of their claim process. They had based these in turn on their Whatsapp messages, because they had extensive contemporaneous documentation of their hours. The only exception is that workers sometimes rounded hours down to the nearest whole hour, whereas the invoices billed to the half-hour.
- **EE-Provided Timesheet:** The timesheets submitted by Baja to Newway match the one timesheet which the workers were able to remove from the office and provide to us. This document showed different handwriting on each worker's line, indicating that they wrote in their own hours. This document was not dated, but we were able to match it to the submitted timesheets and discovered that the employee-reported hours had not been changed in the process of transferring the information to a new timesheet. The worker-provided timesheet listed only cement finishers, while the invoiced timesheet also included laborers and carpenters along with a few additional finishers, indicating that information had been consolidated from other sheets onto the invoiced timesheet, hence the consistent handwriting.
  - See screenshots showing side-by-side comparisons of the invoiced timesheet and the worker-supplied timesheet in the case file under *2019.06.16 comparison 1.jpg* and *2019.06.16 comparison 2.jpg* in the folder *3 Documents and Interviews*.

### Other Seattle Work Sites

We identified several gaps where workers were on Baja payroll but did not show up on the 1120 Denny Way timesheets for certain pay periods. Many of these gaps were resolved when we requested that Newway send us any other invoices and timesheets they had on file from Baja Concrete for other Seattle sites. In response, Newway produced two sets of records: invoices for work performed by Baja employees at 707 Terry Ave (general contractor: Graham) and 2014 Fairview Ave (gc: Bosa), both located within a two block radius of the 1120 Denny Way site. (NOTE: Graham and Bosa are Canadian companies, as are Newway and Onni, and Baja Concrete is reported to be as well.) Newway is working at both sites and Baja Concrete has invoiced them for work performed at both sites, even though Newway insists no contract exists between the two companies.

At no point has Baja Concrete USA Corp indicated that it was performing work at Seattle sites other than 1120 Denny Way. Baja's RFI response identified only 1120 Denny Way and 'Bossa', which we took to mean 188 Bellevue Way, a Bosa-led development project where Newway is present and where several Baja employees were working.

Baja invoiced Newway at a flat rate of \$40 per finisher, \$34 per laborer, and \$52 per carpenter. Per Baja payroll, the workers were generally paid between \$17 – 22 per hour, occasionally as high as 25 per hour, with no overtime or benefits whatsoever, and with several employer expenses further deducted from their paycheck. Baja appears to have paid workers just over half of what they billed Newway. For example, for the pay period 7/29/19 - 8/11/19, Baja billed Newway \$72,607.00 while Baja's payroll for

the corresponding period, with a paydate of 8/16/19, totals \$38,563.77, leaving a difference of \$34,043.23 for a mere two-week period.

With the workers performing up to 150 hours in a bi-weekly pay period with no benefits or overtime and minimal administrative and operational expenses (i.e. no actual staff such as HR, no office lease) Baja Concrete USA Corp and any other parties to this arrangement were able to extract significant profits on the backs of these workers.

#### **Joint Employment**

One of the documents provided by Newway is an undated organizational chart for the 1120 Denny Way site. It includes the Senior Project Manager, Superintendent, Safety Manager, and Layout leads, in addition to the foremen for the various groups. (Antonio Machado is listed here as the 'General Foreman' but Newway's website lists him as one of two site superintendents for the project.)

The majority of Newway workers at the site are carpenters, cement finishers, and laborers, with respective leads/foremen for each craft. Baja Concrete employs the same three types of workers: carpenters, cement finishers, and laborers.

Baja Concrete has not provided any information which indicates there were foremen other than Roberto Soto Contreras, whom it erroneously refers to as an independent contractor, nor any evidence that it employs any administrative/management personnel. For example, while Baja Concrete does work with an outside accountant, it has no employment policies or manual and doesn't appear to have any administrative staffing for human resources, operations, finance, engineering, safety management, or general leadership.

Baja Concrete has no local office (all documents list either the business address in Miami or the apartment where Roberto Soto lived) and no website describing or advertising its services to prospective clients. Such a client would be hard-pressed to determine that Baja Concrete exists, much less contact them to inquire about services and pricing.

Evidence and testimony identified a total of four sites in the Seattle area (included Bellevue) where Baja Concrete operates; in every single case, Newway Forming is present and Baja Concrete bills Newway Forming for work performed there. Baja Concrete did not provide any evidence showing that they contract with or invoice any company other than Newway Forming.

Newway states that no contract exists between the companies, and that Baja Concrete was hired to provide cement finishing of Newway's concrete pours and it simply invoices Newway for time.

See also the summary of worker testimony regarding joint employment in the Interviews section.

#### **Other Seattle Sites**

*Potentially of note:* per the records provided by Newway, Baja invoiced them for the labor at the Terry site consisting only of work performed by four workers on a single date in February of 2019. Similarly, from June 2019 – June of 2019 the invoices for the Fairview site reflect only 1-2 workers present in most pay periods (one exception in January 2020) before scaling up in June of 2020.

[illegible]

In response to a public information request, WA DOSH provided records related to several safety inspections of Newway projects. The record set for violation 317954602 at the 1120 Denny Way location included an employee sign in sheet for a safety meeting.

- ## BC Employment Standards

## Financial Note

**Baja - between \$150,000 - 350,000; Newway, \$2-5 million.**

[illegible]



**Seattle Office of  
Labor Standards**

May 22, 2020

Baja Concrete USA Corp  
12360 NE 8<sup>th</sup> St., Ste. 150  
Bellevue, WA 98005

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

Claudia Penunuri  
[REDACTED]  
[REDACTED]

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



Dear Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri and Carlos Penunuri Ibarra,

The Seattle Office of Labor Standards (OLS) has reason to believe that Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri and Carlos Penunuri Ibarra have violated Seattle Labor Standards Ordinances with respect to one or more employees and has initiated an investigation. I have attached a Notice of Investigation, which details the areas we plan to investigate, and an Initial Request for Information, which requests information and documents relevant to these areas.

I have also attached a Notice to Seattle Employees, in English and Spanish, which Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri and Carlos Penunuri Ibarra must immediately display in a conspicuous and accessible location. If any employees of Baja Concrete USA Corp, Roberto Contreras, Claudia Penunuri and Carlos Penunuri Ibarra speak a primary language other than English or Spanish, contact OLS for a Notice in that language.

Further, I have attached an OLS Employer Guide to Labor Standards Investigations, which provides information about OLS investigations.

Retaliation is illegal. Retaliation includes interfering with, restraining, or denying rights protected under the Seattle Labor Standards Ordinances, or taking any adverse action against a person because they exercised rights protected under the Ordinances. Adverse action means "denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging

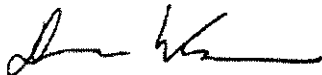


in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to nonemployee, or otherwise discriminating against any person for any reason" prohibited by Seattle Labor Standards Ordinances. Further, an adverse action "may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment."

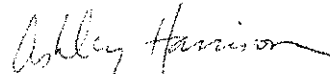
Additionally, the law requires employers to preserve employment records for three years. This includes but is not limited to original records showing all hours worked and all compensation paid. An employer who destroys or falsifies records, or otherwise "willfully hinders, prevents, impedes, or interferes with" an OLS investigation under Seattle's ordinances, will be subject to a civil penalty of not less than \$1,000.

Please reach out to me at [daron.williams@seattle.gov](mailto:daron.williams@seattle.gov) or (206) 733-9969, or [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov) or (206) 386-1930, with any questions. You can find Seattle's Labor Standards Ordinances and our administrative rules on our website at [www.seattle.gov/laborstandards](http://www.seattle.gov/laborstandards).

Sincerely,



**Daron Williams**  
Labor Standards Investigator



**Ashley Harrison**  
Labor Standards Investigator

Enclosures:

Notice of Investigation  
Initial Request for Information  
Notice to Seattle Employees  
OLS Employer Guide to Labor Standards Investigations

**May 22, 2020**

**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., CAS-2020-00186**

**Notice of Investigation**

PLEASE TAKE NOTICE that the Seattle Office of Labor Standards (OLS) is investigating 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) for possible labor standards violations. The current scope of the investigation includes, but is not limited to, potential company-wide violations of the following Seattle Labor Standards Ordinances:

1. Paid Sick and Safe Time Ordinance, SMC 14.16; and
2. Wage Theft Ordinance, SMC 14.20.

Retaliation is illegal. Retaliation includes interfering with, restraining, or denying rights protected under the Seattle Labor Standards Ordinances, or taking any adverse action against a person because they exercised rights protected under the Ordinances. Adverse action means "denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to nonemployee, or otherwise discriminating against any person for any reason" prohibited by Seattle Labor Standards Ordinances. Further, an adverse action "may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment."

The law requires employers to preserve employment records for three years. This includes but is not limited to original records showing all hours worked and all compensation paid. An employer who destroys or falsifies records, or otherwise "willfully hinders, prevents, impedes, or interferes with" an OLS investigation under Seattle's ordinances, will be subject to a civil penalty of not less than \$1,000.



**Seattle Office of  
Labor Standards**

**Initial Request for Information – CAS-2020-00186**

You, Baja Concrete USA Corp (Baja Concrete), Roberto Contreras, Claudia Penunuri and Carlos Penunuri Ibarra, are required to provide the following information requested below to Daron Williams at [daron.williams@seattle.gov](mailto:daron.williams@seattle.gov) and Ashley Harrison at [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov) no later than Monday, June 1, 2020.<sup>1</sup>

Please respond to the questions specified below on behalf of all of your offices, divisions, units, departments, and construction projects and sites operating within the City of Seattle. If you do not provide the requested information or documents, please explain why.

Note that OLS may make additional requests for information during the investigation. Incomplete, incorrect, or falsified information will be considered willful interference, prohibited by SMC 14.16.080.E and SMC 14.20.060.E, and may impact penalty assessments.

If you fail to timely respond to this initial request, or any subsequent request, OLS may assess fines and civil penalties against you.

**I. Business**

1. Provide a current organizational chart(s) showing names and titles of all employees who work in Seattle, and names and titles of all owners, managers and supervisors having direct or indirect authority over those employees.

☐ Included/Attached.

- a. Provide the names and last known addresses of all supervisors and managers who worked for you from 2017 to the present.

☐ Included/Attached.

---

<sup>1</sup> OLS makes this request pursuant to SMC 14.16.060 and 14.20.040.

2. Provide names, titles and addresses of your corporate office, corporate officers, and owners, and percentages of ownership for each location.

--

3. Describe the process by which you publicize job openings, solicit job applicants, and hire new employees. Include the names and titles of individuals with authority to make decisions in this process.

--

4. Identify all entities or individuals that processed your payroll for the past three years.

--

5. Do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra have the same or partially same ownership; overlapping officers, directors, executives, or managers; interrelated labor relations; or interrelated operations with any other entity?

☐ Yes      ☐ No

- a. If yes, explain the relationship(s) with any such entity or entities.

- b. Attach any agreement(s) between Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra and other entity or entities relevant to the relationship(s) described above.

☐ Included/Attached.

6. Provide a list of all buildings or construction projects and sites in Seattle, including complete addresses and dates, on which Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra acted as a contractor or subcontractor from 2017 to the present.

☐ Included/Attached.

7. Do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra share employees or supervisory authority over employees with any other entity or individuals at the 1120 Denny Way, Seattle, WA 98109 construction site or at any other building, construction, or project site?

☐ Yes      ☐ No

- a. If yes, explain the relationship(s) with any such entity, entities, or individuals.

- b. Attach any agreement(s) between Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra and other entity or entities relevant to the relationship(s) described above.

☐ Included/Attached.

8. List all construction projects and sites (with addresses) on which Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra worked in partnership (i.e. as subcontractor or general contractor) with Newway Forming Inc. from 2017–2020.

--

9. List all construction projects and sites (with addresses) on which Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra worked in partnership (i.e. as subcontractor or general contractor) with Onni Contracting (Washington) Inc. from 2017–2020.

--

10. Provide the complete name(s) and title(s) of the person(s) with financial responsibility for the 1120 Denny Way, Seattle, WA 98109 construction site.

--

11. Please provide all written communication (text and/or e-mail) between Antonio Machado, Roberto Contreras, Carlos Penunuri Ibarra, and/or any employee of Baja Concrete from 2017 to the present concerning the following information:

- a. Hours worked by Baja Concrete employees;
- b. Requested sick leave from Baja Concrete employees.

☐ Included/Attached.

12. Please provide all written communication (text and/or e-mail) between Antonio Machado and Roberto Contreras, from 2017 to the present relating to the following subjects:

- a. Newway Forming Inc.;
- b. Baja Concrete;
- c. 1120 Denny Way Seattle, WA 98109 construction site.

☐ Included/Attached.

13. Provide records demonstrating your gross annual dollar volume of sales for 2017–2020.

☐ Included/Attached.

## II. Employees

1. Using an Excel spreadsheet, provide a list of all current and former employees who performed work in Seattle at any time between January 1, 2017 to the present, with their:

- a. Name;
- b. Position;
- c. Telephone number, address, and email address;
- d. Address(es) of construction and project site(s) at which the employee worked;
- e. Rate or rates of pay;
- f. Dates of employment;
- g. Total hours worked in Seattle each year (2017, 2018, 2019, 2020); and
- h. Total hours of Paid Sick and Safe Time used each year (2017, 2018, 2019, 2020).

2. Using an Excel spreadsheet, provide time sheet records for all employees between January 1, 2017 to the present. Records need to be on a pay period basis (e.g. weekly, bi-weekly, or monthly). Please include:
- a. Name;
  - b. Date;
  - c. Hours worked in pay period; and
  - d. Rate of pay for that pay period.
3. Provide a payroll summary for all employees from January 1, 2017 to the present. Please provide for each pay period (e.g. weekly, bi-weekly, or monthly).
4. Aside from English and Spanish, what are the primary languages spoken by employees at the workplace(s) of Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra?
5. Do you have the Office of Labor Standards 2020 poster posted at your place(s) of business?
- ☐ Yes    ☐ No
- a. If so, specify where.
- 
- b. Attach a photo of the poster as posted at your place(s) of business.
- ☐ Included/Attached.
6. Provide a copy of your employee manual and any policies concerning wages and attendance.
- ☐ Included/Attached.
7. Provide copies of paystubs for all employees who performed work in Seattle for the past three years.
- ☐ Included/Attached.



**III. Payment**

1. When do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra pay employees? (E.g. weekly, bi-weekly, or monthly.)

2. What is your workweek? (This is the period used to determine whether an employee has worked more than 40 hours and therefore is eligible for overtime pay (e.g. Sunday at 12:00 a.m. through Saturday at 11:59 p.m.). It is not necessarily the same as your pay period.

3. Have your employees ever worked more than 40 hours in a workweek during the past three years?

☐ Yes ☐ No ☐ Occasionally

- a. If yes or occasionally, provide each employee's name and rate of pay for overtime hours.

4. Do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra have a meal and rest break policy or practice?

☐ Yes ☐ No

- a. If yes, please describe the policy or practice.

**IV. Paid Sick and Safe Time**

1. Do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra offer Paid Sick and Safe Time (PSST) to employees?

☐ Yes ☐ No

2. When can employees use PSST?

3. How do employees accrue PSST hours? (For example, what is the rate of accrual per hour, month or year of work; or what amount of PSST is frontloaded, if any?)

4. How much PSST can employees use each year?

5. How much PSST can employees carry over into the next year?

6. How often do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra notify employees of their PSST balance? How is that notification provided?

7. Do Baja Concrete, Roberto Contreras, Claudia Penunuri and/or Carlos Penunuri Ibarra have a PSST policy?

☐ Yes      ☐ No

a. If yes, provide a copy.

☐ Included/Attached.



**Seattle Office of  
Labor Standards**

May 22, 2020

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

Salvatore Giantomaso  
[REDACTED]

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



Dear Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, and Franco Corona,

The Seattle Office of Labor Standards (OLS) has reason to believe that Newway Forming Inc., Antonio Machado, Salvatore Giantomaso, and Franco Corona have violated Seattle Labor Standards Ordinances with respect to one or more employees and has initiated an investigation. I have attached a Notice of Investigation, which details the areas we plan to investigate, and an Initial Request for Information, which requests information and documents relevant to these areas.

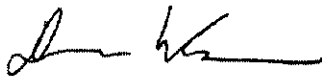
I have attached an OLS Employer Guide to Labor Standards Investigations, which provides information about OLS investigations.

Retaliation is illegal. Retaliation includes interfering with, restraining, or denying rights protected under the Seattle Labor Standards Ordinances, or taking any adverse action against a person because they exercised rights protected under the Ordinances. Adverse action means "denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to nonemployee, or otherwise discriminating against any person for any reason" prohibited by Seattle Labor Standards Ordinances. Further, an adverse action "may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment."

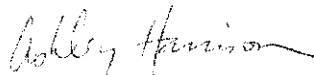
Additionally, the law requires employers to preserve employment records for three years. This includes but is not limited to original records showing all hours worked and all compensation paid. An employer who destroys or falsifies records, or otherwise "willfully hinders, prevents, impedes, or interferes with" an OLS investigation under Seattle's ordinances, will be subject to a civil penalty of not less than \$1,000.

Please reach out to me at [daron.williams@seattle.gov](mailto:daron.williams@seattle.gov) or (206) 733-9969, or [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov) or (206) 386-1930 with any questions. You can find Seattle's Labor Standards Ordinances and our administrative rules on our website at [www.seattle.gov/laborstandards](http://www.seattle.gov/laborstandards).

Sincerely,



**Daron Williams**  
Labor Standards Investigator



**Ashley Harrison**  
Labor Standards Investigator

Enclosures:

Notice of Investigation  
Initial Request for Information  
OLS Employer Guide to Labor Standards Investigations

**May 22, 2020**

**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., CAS-2020-00186**

**Notice of Investigation**

PLEASE TAKE NOTICE that the Seattle Office of Labor Standards (OLS) is investigating 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) for possible labor standards violations. The current scope of the investigation includes, but is not limited to, potential company-wide violations of the following Seattle Labor Standards Ordinances:

1. Paid Sick and Safe Time Ordinance, SMC 14.16; and
2. Wage Theft Ordinance, SMC 14.20.

Retaliation is illegal. Retaliation includes interfering with, restraining, or denying rights protected under the Seattle Labor Standards Ordinances, or taking any adverse action against a person because they exercised rights protected under the Ordinances. Adverse action means "denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to nonemployee, or otherwise discriminating against any person for any reason" prohibited by Seattle Labor Standards Ordinances. Further, an adverse action "may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment."

The law requires employers to preserve employment records for three years. This includes but is not limited to original records showing all hours worked and all compensation paid. An employer who destroys or falsifies records, or otherwise "willfully hinders, prevents, impedes, or interferes with" an OLS investigation under Seattle's ordinances, will be subject to a civil penalty of not less than \$1,000.



**Seattle Office of  
Labor Standards**

**Initial Request for Information - CAS-2020-00186**

You, Newway Forming Inc. (Newway Forming), Antonio Machado, Salvatore Giantomaso, and Franco Corona, are required to provide the following the information requested below to Daron Williams at [daron.williams@seattle.gov](mailto:daron.williams@seattle.gov) and Ashley Harrison at [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov) no later than Monday, June 1, 2020.<sup>1</sup>

Please respond to the questions specified below on behalf of all of your offices, divisions, units, departments, and sites operating within the City of Seattle. If you do not provide the requested information or documents, please explain why.

Note that OLS may make additional requests for information during the investigation. Incomplete, incorrect, or falsified information will be considered willful interference, prohibited by SMC 14.16.080.E and SMC 14.20.060.E and may impact penalty assessments.

If you fail to timely respond to this initial request, or any subsequent request, OLS may assess fines and civil penalties against you.

1. Provide a current organizational chart(s) showing names and titles of all employees who work in Seattle as well as all names and titles of all managers and supervisors having direct or indirect authority over those employees.

☐ Included/Attached.

- a. Provide the names and last known addresses of all supervisors and managers who worked for you from 2017 to the present.

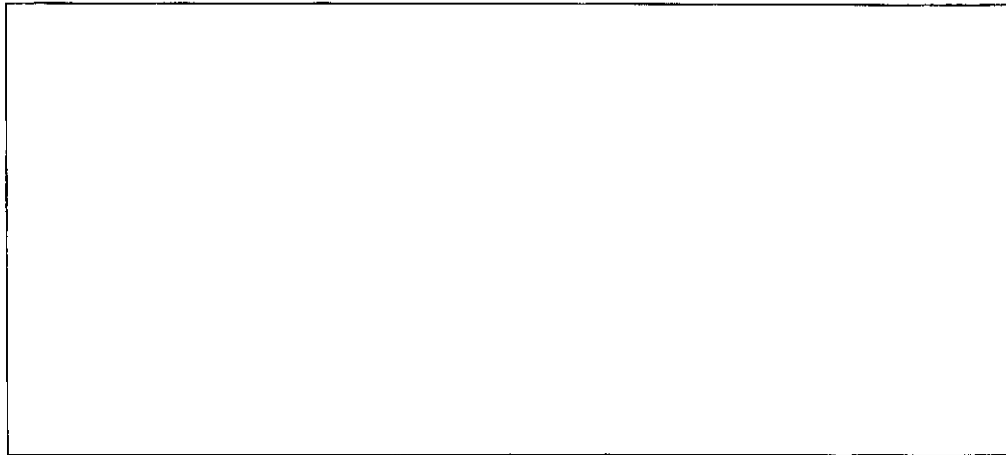
☐ Included/Attached.

---

<sup>1</sup> OLS makes this request pursuant to SMC 14.16.060 and 14.20.040.

2. Provide a list of all buildings or construction projects and sites in Seattle, including complete addresses and dates, on which Newway Forming, Antonio Machado, Salvatore Giantomaso, and/or Franco Corona acted as a contractor or subcontractor from 2017 to the present.

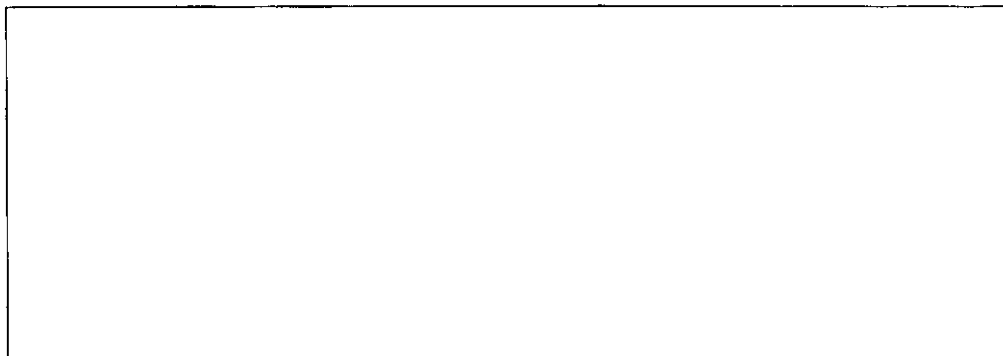
☐ Included/Attached.



3. Do Newway Forming, Antonio Machado, Salvatore Giantomaso, and/or Franco Corona have the same or partially same ownership; overlapping officers, directors, executives, or managers; interrelated labor relations; or interrelated operations with any other entity?

☐ Yes    ☐ No

- a. If yes, explain the relationship(s) with any such entity or entities.



- b. Attach any agreement(s) between Newway Forming, Antonio Machado, Salvatore Giantomaso, and/or Franco Corona and another entity or entities relevant to the relationship(s) described above.

☐ Included/Attached.



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

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

**Antonio Machado**  
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

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

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

**Claudia Penunuri**  
[REDACTED]

**Salvatore Giantomaso**  
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 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](mailto:daron.williams@seattle.gov) and [ashley.harrison@seattle.gov](mailto: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.

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

INTERVIEW STATEMENT

INTERVIEWEE: [REDACTED] (non-disclosure)  
(Interpreter)

ADDRESS:

PHONE (HOME) (WORK) NA

**NO PERSON MAY RETALIATE AGAINST YOU FOR TESTIFYING IN THIS INVESTIGATION**

The Seattle Labor Standards Ordinances prohibit discrimination or retaliation against a person who assists in an investigation by the Seattle Office of Labor Standards. If you experience discrimination or retaliation because you testified in this investigation, please contact the Seattle Office of Labor Standards at (206) 684-4500.

In most circumstances, you have a right to a private interview with OLS. If you want another person to be present during the interview, please discuss that request with the Investigator.

I give the following statement as a response to questions asked of me regarding this case by the Seattle Labor Standards Investigator, Daron Williams, in a personal interview on January 29, 2020:

**Background**

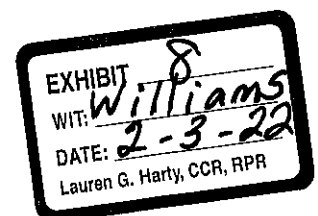
OLS's role is to serve as a neutral and objective fact-finder. Investigators do not advocate or represent either party, but gather and analyze information and then apply the law to determine if there's been a violation of the Seattle Labor Standards Ordinances.

The **purpose of this interview** is to gather more information to determine if a violation of the ordinance has occurred.

Based on the answers to my questions, I will draft an **interview statement**. I will send it to you for your review. If anything is incorrect or inaccurate, please mark through and change it, then sign it and send it back to me. This statement is certified under **penalty of perjury**, so please ensure it is accurate and complete.

This statement is **subject to public disclosure laws**.

**Q: Do you understand what public disclosure means?**



INTERVIEW STATEMENT -1

Interviewee Initials \_\_\_\_\_

1 **Yes/No Non-disclosure**

2 You should also know that no person may retaliate against you for testifying in this  
3 investigation and you have a right to a private interview.

4 **Q: Do you understand what retaliation means?**

5 Yes/No

6 You have the right to have **legal representation** during the investigation. In most cases,  
7 you have the right to private interview. You may also voluntarily request that someone be  
8 present during this interview.

9 **Q: Would you like to request that anyone be present?**

10 Yes/No

11 **Background on Interviewee**

12 Q: When did you start working for the company?

13 - I started around [REDACTED]

14 Q: When was your last day with the company? (if applicable)

15 - [REDACTED]  
16

17 Q: List all the projects including dates that you worked on over the past three years.

18 - [REDACTED] Majority of my work was on Denny Way, we were building  
19 two towers that were condos in one but they were apartments. Currently, they  
20 are still building it. It's on the corner of Fairview Ave. N and Denny Way.

21 [REDACTED]. Newway and Onni are the  
22 main owners of the Project, but we are closely connected to Newway. The  
23 only two group of employees on the project was Newway and Baja. We have  
24 around 20-25 employees at Baja. Newway also had a project in Bellevue  
25 moved us there when they needed help [REDACTED]. The owner of Baja  
26 Concrete is in Miami but the (foreman/operations manager) is Chilean and his  
27 name is Roberto Soto Contereas, he is leading the operations here. The owner  
28

INTERVIEW STATEMENT -2

Interviewee Initials \_\_\_\_\_

SEATTLE-OLS-1089



1 of Newway is in Canada and his name is Tony. Baja has Cement, Laborers  
2 and carpenters. Roberto would pay for 60 hours but at the regular rate but not  
3 overtime.

4 Q: How were you paid?

- 5 - I get paid by direct deposit. I started \$18, then it went to \$20, to \$21 and then  
6 to \$22 an hour. I was told I was paid by the hour. I would work 55 or 65  
7 hours a week. They put 7 or 8 dependents on my taxes and change my name  
8 on my taxes as [REDACTED]. Roberto charged us for gas and parking,  
9 typically \$50. We had to pay for our own supplies, mask, hammer, and the  
10 tool used to iron down cement.

11 Q: How often were you paid?

- 12 - Every 15 days.

13 Q: For payroll purposes, when did the week start/when did the week end?

- 14 - I think Tuesday is when the work week would start.

15 Q: Were pay checks stubs provided? How? What type? (do you have copies)

- 16 - Yes, I did and I have some copies.

17 Q: What benefits did you receive?

- 18 - We did not receive anything. I know he didn't treat as well if we were sick.

19 Q: How was overtime paid? (Time and one-half after 8 in a day or 40 in a week,  
20 comp time, not at all).

- 21 - I was never paid overtime.

22 Q: Did you receive any bonuses?

- 23 - Not that I know of.

24 Q: Were you paid for all the hours you worked?

- 25 - No

26  
27  
28  
INTERVIEW STATEMENT -3

Interviewee Initials \_\_\_\_\_

SEATTLE-OLS-1090

1  
2  
3 **Background on Interviewee job duties**  
4

5 Q: Who directed your work?

6 - Roberto.

7 Q: Who hired you?

8 - Roberto.

9 Q: How many employees worked for this company?

- 10 - There are around 20 employees. There are employees who have been there  
11 longer than me, for a few years. There are around 4 carpenters, 12 cement, 4  
12 laborers. When Baja first started, they only did concrete but changed to  
13 laborers to carpenters. The past couple of years there was around 50 people  
14 total who worked there.
- 15 - We normally start around 7am but usually get there around 6:30am. Then the  
16 workers would leave at 4:30-5:30pm. The cement and laborers would  
17 sometimes arrive 3:30am – leave around 7pm a few times a week. Roberto has  
18 been threatening us, so a lot of workers are scared. Newway's owner is the  
19 Godfather of the owner of Baja Concrete (Carlos).

20 Q: How often do employees work in Seattle?

21 - Pretty much the whole time is in Seattle.

22 Q: Were there any employees under 18 years of age working for the company?

23 - No.

24 Q: List all employees and include phone numbers of any employees not paid  
25 correctly  
26

27 **Wage Theft Ordinance Questions**  
28

INTERVIEW STATEMENT -4

Interviewee Initials \_\_\_\_\_

SEATTLE-OLS-1091

1  
2 Q: Do you report to the shop or the jobsite each day?

- 3 - [REDACTED]. There were a few minivans and people in cars as well  
4 driving us to work each day.  
5

6 Q: What time did you generally start?

- 7 - Would start around 7am but usually get there around 6:30am.  
8

9 Q: What time did you generally get off?

- 10 - I would leave around 5:30pm. Occasionally we would work until 3:30pm but  
11 that is once every couple of days. We would be done once Roberto is done.

12 Q: What days of the week did you work?

- 13 - Typically, 6 days a week. Monday – Saturday.  
14

15 Q: How long and how many breaks did you take each day?

- 16 - We were given two breaks, one from 10am - 10:30am, then the other 12:30pm  
17 - 1pm one was paid each time. It would be the same amount of breaks and time  
18 each day regardless if it was an 8-hour day or a 14-hour day. Typically, three  
19 days a week we never get a break once (days we started at 3:30am). On those  
20 days we would just eating crackers from our pockets.

21 Q: What do you do as soon as you get to work?

- 22 - We know what we have to do as soon as we get there, occasionally we would  
23 meet in the morning and be told what we need to do.

24 Q: Who kept track of the hours your worked?

- 25 - Roberto kept track of the hours. We have a witness who was the direct  
26 foreman of Newway, who knew we were working too many hours and not  
27 getting paid. His name was [REDACTED] and he was the foreman of  
28 Newway from [REDACTED].

1 Q: What were the hours documented on?

- 2 - Roberto would have us fill out a form of how many hours you worked at the  
3 end of the day and then we signed it and gave it back to him at the end of the  
4 week. It was a sheet for a week and we would receive it on Monday or  
5 Wednesday. We did that for about 2 months [REDACTED]. Then after that  
6 he would tell you to record it on your phone and keep your own record. He  
7 would ask for it every 15 days. We usually sent that to him via the Whatsapp  
8 app or text.

9 Q: Did you record all the hours that you worked?

- 10 - I would record them on my phone for two months. Usually one person from  
11 the group (in the minivan group) sometimes would record hours.

12 Q: Were the hours recorded accurate?

- 13 - No, they weren't.

14 **Paid Sick and Safe Time Ordinance Questions**

15  
16 Q: Did your company have a paid sick leave policy?

- 17 - No, he said something paying for medical insurance. When I was sick  
18 [REDACTED] he punished me for being sick. He wouldn't let me work the  
19 next day because I called out sick. This happened to a lot of people, but one  
20 worker was out of work for 10 days and they wouldn't let him come back to  
21 work for a week because he called in sick. The Godfather (Tony), through  
22 Roberto, would threaten our immigration status and say he would work to  
23 make sure we wouldn't get jobs anywhere else if we called in sick again. That  
24 they would call immigration (ICE) on us. I got hurt on the job once and was  
25 out for [REDACTED] days and was never paid for them in  
26 [REDACTED]

27 Q: Did you receive a written notice of a paid sick time policy?  
28

1 - No.

2 Q: How much PSST did you receive?

3 - None.

4 Q: Did you accrue PSST as soon as you started?

5 - No.

6 Q: What is the process of calling in sick if you needed to?

7 - No process really, we would just call Roberto and say I'm sick today and  
8 can't go.

9 **Q: Do you have any other questions about any of this?**

10 Yes/No

11 - What is the next steps?

12  
13  
14 This statement was drafted at the time of the interview and edited by the Investigator for  
15 clarity and conciseness. This statement is not a transcript. By signing below, I  
16 acknowledge that I have been provided an opportunity to review and correct the accuracy  
17 of this statement based on my recollection of the interview.

18 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE  
19 OF WASHINGTON THAT THIS STATEMENT IS TRUE AND CORRECT.

20 \_\_\_\_\_  
21 Date Signed

22 \_\_\_\_\_  
23 Location (City and State)

24  
25  
26  
27  
28  
\_\_\_\_\_  
INTERVIEW STATEMENT -7

Interviewee Initials \_\_\_\_\_

SEATTLE-OLS-1094

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

INTERVIEW NOTES

INTERVIEWEE: [REDACTED]

ADDRESS: [REDACTED]

PHONE [REDACTED]

Q: When did you start working for Baja Concrete?

[REDACTED]

Q: List all the projects including dates that you worked on over the past three years.

[REDACTED]

Q:

[REDACTED]

Q: Do you know if Baja was an official sub-contractor there?

My understanding is that Baja Concrete works for Newway, so that's how we were there.

Q: [REDACTED]

[REDACTED]

Q: Were you told in writing how much you will be paid when you first started?

No. They just said how much they'd pay me and that was it. That was supposed to be \$26/hour. When I started [working there] I had just arrived to Seattle. Roberto said they would pay me \$15 per hour by check and then the remainder in cash, and I always had money coming in from two different places. Then they started depositing to my account.

Q: When you were paid by both check and cash, how long did that last?  
Just a few months. After that it was all direct deposit from different sources.



1 Q: [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q: Do you know if you were actually paid at a rate of \$26 per hour?

5 We never got pay stubs so it was very hard to know how they were paying us. There were  
6 always problems. At first, he said that someone else was going to deposit the money and  
7 that some had to be taken out for other things.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q: How was overtime paid?

16 It wasn't paid at time-and-a-half, just at my regular hourly rate. That's what makes me  
17 kinda mad sometimes, we didn't get any sick hours, no overtime, the checks would say  
18 things were being taken out but I didn't actually have medical insurance, sometimes we  
19 had to work Sundays, and it's not just me, it's all my coworkers. At first we didn't want  
20 to say anything, a lot of us didn't feel comfortable coming forward because of our  
immigration status, we thought that we could get fired or deported. But when one person  
went forward, more of us started coming forward.

21 There are still new people coming in, there's a group of people from Chile who just came  
22 in and I talked to them and they're not getting paid right. I think they came in about a  
month ago. At my job site there are two, and then there are others at different sites.

23 I think what happens is that people who've been working at Baja, once they want to get  
24 paid more, Roberto fires them and just brings in more people who are willing to work for  
25 16, 17 dollars an hour. When I was earning 25 dollars an hour, I asked him for a 1 dollar  
26 raise and he said plenty of people wanted my job and he didn't care if I worked for him  
or not.

27 Q: Were you paid for all the hours you worked?

28

1  
2 I think I was paid for all my hours. Sometimes I worked 12 or 13 hours, I think I did get  
3 paid for all my hours but like I said, no overtime and no medical benefits even though  
4 they took money from our paychecks.

5 Q: What was deducted from your paychecks?

6 What they took out was sick/medical, something like that, and city and state things. I'm  
7 not really sure without the pay stubs. [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 Q: Explain your daily duties.

15 I worked as a carpenter doing concrete work. We did everything – the columns, the  
16 elevator shaft, the floors.

17 That's how the Newway boss, Ivano, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 Q: Who directed your work?

23 Ivano, the jefe. Roberto was just the guy that hired us.

24  
25 Q: Were there any foremen for Baja at your site?

26 Roberto would come maybe two times a week just to check things out, maybe 20 minutes  
27 each visit. Other than that, no.  
28



1  
2 Q: Are workers from Baja concrete still working at the One88 site?

3 No, I don't think anyone from Baja is at the Bellevue site anymore, I think everyone is  
4 downtown. Roberto had a lot of carpenters, but everyone started to see how much they  
5 could make elsewhere. I think he only has a few carpenters now and everyone else is a  
6 concrete finisher or laborer. I think they are paid less than carpenters.

7 One time, Roberto told us to get more laborers for him and he'd pay them 16 or 17  
8 dollars an hour, but you can make that at McDonald's and construction is dangerous.  
9

10 Q: Who hired you?

11 Roberto.

12 Q: How many employees worked for this company?

13 When Roberto hired us, he had come from Canada and I think there were 5 carpenters,  
14 then the laborers and the finishers came, and more and more were coming.

15 Q: What time did you generally start working?

16 Usually at 7am, sometimes at 6am if there were jobs we needed to finish.  
17

18 Q: What time did you generally get off?

19 The fewest number of hours I would work in a day was ten hours. Sometimes I would  
20 work 120 hours in a 15-day period, sometimes 64 hours a week, work on Saturdays,  
21 sometimes even from 8am – 7pm on Sunday. One time we worked from Sunday –  
22 Sunday.

23 There were 2 or 3 months where I had a paper with my hours, I can look for that but it's  
24 hard to read. After that, there was a paper at the site that we would fill out with our hours.

25 Q: How long and how many breaks did you take each day?

26 We had a small break in the morning and then time to eat, those were our only breaks,  
27 sometimes we didn't have them at all.  
28

1 Q: Who told you when it was break time?

2 Since we were working there under Newway, Newway would tell us when the breaks  
3 were.

4 Sometimes I would have an issue with Ivano because he would want me to work past 6 or  
5 7 in the evening, I would tell him I'd gladly do it if I worked for him because then I'd be  
6 getting paid fairly, would get overtime. He asked me what the problem was if we were  
7 getting 45 dollars an hour. It turned out that Roberto was charging 45 dollars an hour for  
8 our work. So Ivano and I talked about that, then he understood what the situation was.

9 Q: Did your company have a paid sick leave policy?

10 No.

11 Q: What was the process of calling in sick if you needed to?

12 I would tell Roberto, but sometimes I would call Ivano, the Newway boss. They wouldn't  
13 pay us the day.

14 Q: Were there instances where you didn't go into work when you were sick? If so, were  
15 you paid for it?

16 Yes, there were times I was sick, not sure how many, but I didn't get paid those days.

17 Q: Do you know who else is involved in the company?

18 I don't know if he's the owner or if he's just in business with Roberto, but there's a guy  
19 whose name is Carlos and he's in Canada. I haven't met him.

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Q: Did you ever ask Carlos about the overtime pay?

24 No, I never called Carlos about not getting paid overtime, only when the money was late.  
25 But I do know that Carlos said to Roberto one time that he didn't want people who were  
26 getting paid more than 25 per hour. I heard that from a colleague, I believe he might have  
27 heard that from Roberto. Roberto and Carlos were happy and doing well when their  
28 people were earning like 20 dollars an hour.

1 [REDACTED]  
2 [REDACTED]  
3 Q: Do you know any other names of managers/owners at Baja?

4  
5 I think the company is based out of Los Angeles. I think it's in the name of the sister of  
6 Carlos. I think I saw on a paper that it was based in Los Angeles, but I'm not sure.

7 Q: Do you know where Baja Concrete is operating now?  
8 [REDACTED]  
9 [REDACTED]

10 Q: How did you know that Baja was billing Newway 45 dollars an hour for your work?  
11

12 There was a guy from Newway higher up than Ivano, he worked in the office, he told us  
13 we were getting paid well and said that rate, but he didn't know that Roberto was taking  
14 the money.

15 Q: Do you know anything about connections or contacts between Baja Concrete and  
16 Newway?

17 I think Roberto does talk to Ivano, Tony, Jeff.

18 One time I talked to the owner of Newway, Salvatore, to tell him I wanted to start  
19 working for him and he told me that I was already working for him through Baja, but I  
20 didn't say anything to him about the overtime because I didn't want Roberto to fire me.  
21 [REDACTED]  
22 [REDACTED]

23 Q: Who at Newway knows about the labor issues?

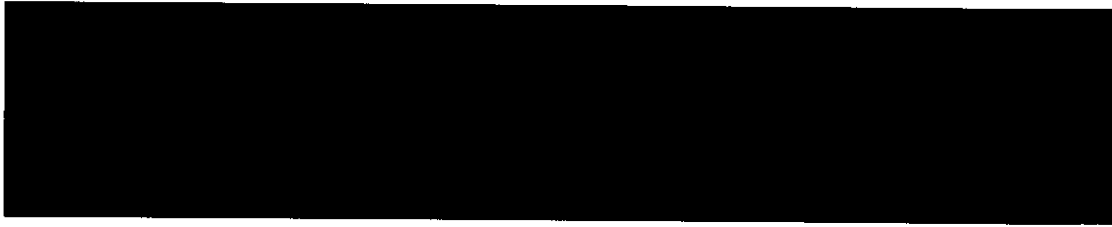
24 Honestly, I have no idea if Newway knows.

25 Q: Do you know where the money goes?

26 I don't know.

27 Q: Is there anything else you think that we should know for this investigation?  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



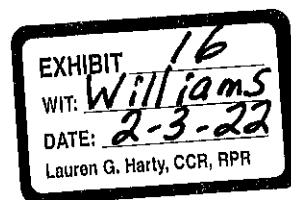
BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

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 Contreras<sup>1</sup> 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 Ibarra<sup>2</sup>, and/or any employee of Baja Concrete,

---

<sup>1</sup> 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.

<sup>2</sup> 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 Machado<sup>3</sup> 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

---

<sup>3</sup> 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.<sup>4</sup> 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.

---

<sup>4</sup> 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 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.<sup>5</sup>

---

<sup>5</sup> 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.<sup>6</sup>

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.

---

<sup>6</sup> 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 inflation<sup>7</sup>.

### **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](mailto:mkimball@mdklaw.com), [alarkin@mdklaw.com](mailto:alarkin@mdklaw.com), [Wandler@OLES.com](mailto:Wandler@OLES.com), and [jrconcrete99@gmail.com](mailto:jrconcrete99@gmail.com) when this Determination and

<sup>7</sup> <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](mailto:daron.williams@seattle.gov) and [ashley.harrison@seattle.gov](mailto: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](mailto: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](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](mailto: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.<sup>8</sup> If Respondents fails to file such appeal, the Director's Order will be final and enforceable. Interest

<sup>8</sup> 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](http://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**

<b>Table 1. Remedies Payable to Workers (&amp; Number of Workers Receiving Remedies)</b>							
<b>Ordinance</b>	<b>Back Wages</b>	<b>Interest</b>	<b>Liquidated Damages</b>	<b>Civil Penalties</b>	<b>Fines</b>	<b>Ordinance Total</b>	<b>Number of Workers Receiving Remedies (Under Ordinance)</b>
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
<b>Total</b>	<b>\$631,288.54</b>	<b>\$161,338.37</b>	<b>\$1,262,577.19</b>			<b>\$2,055,204.10</b>	

Total number of unique individuals receiving financial remedies under all Ordinances: 53

<b>Table 2. Remedies Payable to the City of Seattle</b>			
<b>Ordinance</b>	<b>Civil Penalties</b>	<b>Fines</b>	<b>Total</b>
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
<b>Total</b>	<b>\$53,404.80</b>	<b>\$117,381.40</b>	<b>\$170,786.20</b>

<b>Table 3. Civil Penalties &amp; Fines (Itemization of Civil Penalty &amp; Fine Totals Listed in Tables 1-2)</b>			
<b>IMPORTANT NOTE:</b> 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.			
<b>Civil Penalty or Fine (Applicable Ord. Listed in Parenthesis)</b>	<b>Amount Per Aggrieved Party/Record (Only If Applicable)</b>	<b>Number of Aggrieved Parties/Records (Insert "1" if penalty or fine is not per person/record)</b>	<b>Total</b>
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 (Applicable Ord. Listed in Parenthesis)	Amount Per Aggrieved Party/Record (Only If Applicable)	Number of Aggrieved Parties/Records (Insert "1" if penalty or fine is not per person/record)	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
<b>Total</b>			\$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 3<sup>rd</sup> 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 Pachecho	\$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 Hirales 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
<b>GRAND TOTAL</b>	<b>\$1,262,577.19</b>	<b>\$161,338.37</b>	<b>\$631,288.54</b>	<b>\$2,055,204.10</b>

**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

**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.

**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** **YES**

**\$16.69** **\$15.00**  
PER HOUR PER HOUR

**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
<b>Employer Size</b> FULL-TIME EQUIVALENT EMPLOYEES (FTEs) WORLDWIDE	Up to 49 FTEs	50 - 249 FTEs	250+ FTEs
<b>Accrual of PSST</b> PER HOURS WORKED	1 hour PER 40 HOURS	1 hour PER 40 HOURS	1 hour PER 30 HOURS
<b>Carry over of unused PSST</b> 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

**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

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

**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

**Employers**  
Obtain compliance assistance and/or receive training

**206-256-5297**  
[www.seattle.gov/laborstandards](http://www.seattle.gov/laborstandards)

810 THIRD AVE, SUITE 375  
SEATTLE, WA 98104  
HOURS: 8 AM-5 PM (MON-FRI)  
[LABORSTANDARDS@SEATTLE.GOV](mailto:LABORSTANDARDS@SEATTLE.GOV)



# 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

**Pequeños empleadores**  
(500 EMPLEADOS O MENOS)

¿El empleador paga al menos \$16.9 por hora por los beneficios médicos de cada empleado o el empleado gana al menos \$16.9 por hora en propinas?

**NO** **\$16.69** POR HORA

**SI** **\$15.00** POR HORA

**Tamaño del empleador**  
Cuenta el número total de los empleados 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.

**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**

	NIVEL 1	NIVEL 2	NIVEL 3
<b>Tamaño del empleador</b> EQUIVALENTE DE EMPLEADOS A TIEMPO COMPLETO (FULL TIME EMPLOYEES, FTE) A NIVEL MUNDIAL	Hasta 49 FTE	50 – 249 FTE	250+ FTE
<b>Devengo del PSST</b> POR HORAS TRABAJADAS	1 hora POR 40 HORAS	1 hora POR 40 HORAS	1 hora POR 30 HORAS
<b>Acumulación del PSST</b> no devengado POR AÑO	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](http://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

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.

OLS CASE NO. CAS-2020-00186

SUBPOENA DUCES TECUM

**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](mailto:daron.williams@seattle.gov) and [ashley.harrison@seattle.gov](mailto: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.