

4/28/2022 Deposition Excerpts:

OLS 30(b)(6)

Katie Jo Keppinger

EXHIBIT E

TO DECLARATION OF CINDI WILLIAMS

Page 1

BEFORE THE HEARING EXAMINER
OF THE CITY OF SEATTLE

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

ZOOM DEPOSITION UPON ORAL EXAMINATION
OF
KATIE JO KEPPINGER 30(b)(6)

12:50 p.m.
April 28, 2022

REPORTED BY: Pat Lessard, CCR #2104

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR BAJA CONCRETE USA CORP:</p> <p>4 MR. ALEX LARKIN</p> <p>5 MDK Law Associates</p> <p>6 777 108th Avenue NE, Suite 2000</p> <p>7 Bellevue, WA 98004</p> <p>8 425.455.9610</p> <p>9 alarkin@mdklaw.com</p> <p>10</p> <p>11 FOR CITY OF SEATTLE OFFICE OF LABOR STANDARDS:</p> <p>12 MS. ERICA FRANKLIN</p> <p>13 MS. LORNA SYLVESTER</p> <p>14 Seattle City Attorney</p> <p>15 701 Fifth Ave., Suite 2050</p> <p>16 Seattle, WA 98104</p> <p>17 erica.franklin@seattle.gov</p> <p>18</p> <p>19 FOR NEWWAY FORMING, INC:</p> <p>20 MS. NICOLE WOLFE</p> <p>21 Oles Morrison Rinker & Baker</p> <p>22 701 Pike Street, Suite 1700</p> <p>23 Seattle, WA 98101</p> <p>24 wolfe@oles.com</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR ANTONIO MACHADO:</p> <p>4 MS. SARA KINCAID</p> <p>5 Roche Law Group</p> <p>6 500 Union Street, Suite 909</p> <p>7 Seattle, WA 98101-4052</p> <p>8 206.652.8670</p> <p>9 sara@roche.law.com</p> <p>10</p> <p>11</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 4</p> <p>1 EXAMINATION</p> <p>2 ATTORNEY PAGE</p> <p>3 BY MR. LARKIN: 5</p> <p>4 BY MS. KINCAID: 55</p> <p>5 BY MS. WOLFE: 58</p> <p>6 BY MR. LARKIN: 61</p> <p>7 BY MS. FRANKLIN: 67</p> <p>8 EXHIBIT INDEX</p> <p>9 No. DESCRIPTION PAGE</p> <p>10 Exhibit 17 Excel spreadsheet. 42</p> <p>11</p> <p>12 REFERRED EXHIBIT INDEX</p> <p>13 Referred 1 Notice of Deposition. 6</p> <p>14 Referred 2 Findings of Fact, Determination 12</p> <p>15 and Final Order.</p> <p>16 Referred 18 6/30/81 email from Ashley</p> <p>17 Harrison to Martin Valencia with</p> <p>18 attachments.</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 5</p> <p>1 KATIE JO KEPPINGER, being duly sworn, testified</p> <p>2 upon oath, as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. LARKIN:</p> <p>5 Q. Hello, Ms. Keppinger. I'm Alex Larkin. I'm</p> <p>6 one of the lawyers for Baja USA Corp.</p> <p>7 A. Nice to meet you.</p> <p>8 Q. Nice to meet you.</p> <p>9 So some basic ground rules. We do this, I</p> <p>10 guess, for every deposition.</p> <p>11 Keep in mind you are under oath and you and</p> <p>12 I have to be careful not to talk over each other. We</p> <p>13 have to let each other finish a question or answer</p> <p>14 before beginning the next one, even if it's obvious --</p> <p>15 we think it's obvious what the person is going to say.</p> <p>16 To the extent practical and practicable</p> <p>17 answer questions with a clear "Yes" or "No" for those</p> <p>18 type of questions.</p> <p>19 We can take breaks whenever you want to, the</p> <p>20 one exception being when there's a question pending.</p> <p>21 So if I've asked a question you have to respond to it</p> <p>22 before taking a break if you want to take a break.</p> <p>23 And one question, are you taking any or on</p> <p>24 any medications or do you have any conditions that</p> <p>25 might affect your ability to answer questions today?</p>

<p style="text-align: right;">Page 6</p> <p>1 A. No.</p> <p>2 Q. Okay. So have you ever been deposed before?</p> <p>3 A. No.</p> <p>4 Q. Okay. So what is your -- by the way, I'll</p> <p>5 refer to the City of Seattle Office of Labor Standards</p> <p>6 during this deposition just as OLS for short.</p> <p>7 So are you with OLS?</p> <p>8 A. Yes.</p> <p>9 Q. What is your position with OLS?</p> <p>10 A. I'm the enforcement manager.</p> <p>11 Q. How long have you been in that position?</p> <p>12 A. Since early 2018.</p> <p>13 Q. And prior to being enforcement manager were</p> <p>14 you with OLS in a different capacity?</p> <p>15 A. Yes.</p> <p>16 Q. What was your position?</p> <p>17 A. I was a senior investigator.</p> <p>18 Q. So overall how long have you been working</p> <p>19 for or with OLS?</p> <p>20 A. It will be five years this September.</p> <p>21 Q. So with that I'll just get right to it and</p> <p>22 introduce -- again, this is Exhibit 1.</p> <p>23 (Referred Deposition Exhibit No. 1.)</p> <p>24 Q. (By Mr. Larkin) I'm sharing my screen. Do</p> <p>25 you see this document?</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. I'll scroll through and then come</p> <p>3 back to the top of it.</p> <p>4 Have you seen this document before?</p> <p>5 A. Yes, I think I have.</p> <p>6 Q. So this is the Appellant Baja Concrete's</p> <p>7 Notice of Rule CR 30(b)(6) Deposition to Respondent</p> <p>8 City of Seattle, specifically OLS.</p> <p>9 And within this document there's a list of</p> <p>10 topics or categories of topics that we are deposing</p> <p>11 OLS about today.</p> <p>12 And looking at item two on this list which</p> <p>13 is shown on the screen, I'll just go ahead and read</p> <p>14 this. "Provisions of the Seattle Municipal Code</p> <p>15 referred to in the Determination, including regarding</p> <p>16 the application of specific SMC provisions which form</p> <p>17 the basis for the OLS's Determination in this matter,</p> <p>18 such as issues regarding under what circumstances</p> <p>19 those SMC provisions are imposed and what acts or</p> <p>20 omissions the OLS regards as constituting violations</p> <p>21 of those provisions, and the OLS's basis for imposing</p> <p>22 penalties, fines, liquidated damages under those</p> <p>23 provisions."</p> <p>24 Are you prepared to testify as to these</p> <p>25 items in item number two?</p>
<p style="text-align: right;">Page 8</p> <p>1 A. Yes.</p> <p>2 Q. So on item four on the next page or the</p> <p>3 third page, "The policies, methodologies and</p> <p>4 calculations used to determine the back wages, paid</p> <p>5 sick and safe time, wage theft, minimum wage,</p> <p>6 interest, liquidated damages and civil penalties set</p> <p>7 out in Attachments A and B to the Determination."</p> <p>8 Are you prepared to testify as to those</p> <p>9 topics?</p> <p>10 A. Yes.</p> <p>11 Q. Are you also familiar with and prepared to</p> <p>12 testify about the joint employment?</p> <p>13 MS. FRANKLIN: So if I could just clarify.</p> <p>14 I think we established that Ms. Keppinger could</p> <p>15 testify to topics two and four as well as general</p> <p>16 policy questions.</p> <p>17 Q. (By Mr. Larkin) General policy questions.</p> <p>18 Okay.</p> <p>19 So with that, I'll pull up the next exhibit.</p> <p>20 Well, let me ask a few questions generally about the</p> <p>21 OLS.</p> <p>22 Could you just explain, just briefly, what</p> <p>23 is, say, the mission or the purpose of the OLS? What</p> <p>24 is the OLS? What is its function?</p> <p>25 A. So OLS administers Seattle's Municipal Labor</p>	<p style="text-align: right;">Page 9</p> <p>1 Standards Ordinances, several. I think there's about</p> <p>2 15 or 16 that we enforce currently.</p> <p>3 So City Council passes these ordinances and</p> <p>4 then we are charged with administering them and</p> <p>5 enforcing them.</p> <p>6 Q. So in the context of enforcing or</p> <p>7 investigating a potential violation or alleged</p> <p>8 violation of the municipal code sections that you're</p> <p>9 referring to does the OLS regard workers or the</p> <p>10 claimants or plaintiffs -- well, does ask OLS regard</p> <p>11 itself as an advocate for workers?</p> <p>12 A. No. OLS is a neutral fact-finding entity.</p> <p>13 So we collect evidence from workers and employers and</p> <p>14 witnesses and then we consider that. But we're not an</p> <p>15 advocacy entity.</p> <p>16 We do, however, enforce those ordinances and</p> <p>17 those ordinances have a particular purpose, which is</p> <p>18 extending protections to Seattle workers.</p> <p>19 Q. Okay. Is that true, would you say, of all</p> <p>20 the ordinances that OLS is tasked with enforcing?</p> <p>21 A. I think generally. I'd have to go through</p> <p>22 and think about each one. Certainly for the ones that</p> <p>23 are involved in today's deposition.</p> <p>24 Q. Okay. So the OLS is not an advocate for</p> <p>25 workers?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. No.</p> <p>2 Q. Okay. Does the OLS sort of work together</p> <p>3 with or coordinate with entities or organizations that</p> <p>4 do advocate for workers?</p> <p>5 A. Sometimes we do, but we have a community</p> <p>6 outreach and education fund. I'm not sure if you're</p> <p>7 familiar with that. But the City provides funding for</p> <p>8 outreach and education to workers through these</p> <p>9 different community organizations.</p> <p>10 And we are in contact with them.</p> <p>11 Q. So you said the City provides, has some</p> <p>12 outreach programs.</p> <p>13 Does the OLS specifically get involved in</p> <p>14 those outreach programs?</p> <p>15 MS. FRANKLIN: Objection; outside the scope</p> <p>16 of the 30(b)(6) topics.</p> <p>17 But you can still answer. Answer if you</p> <p>18 know.</p> <p>19 A. Okay. OLS is required to administer those</p> <p>20 funds.</p> <p>21 Q. (By Mr. Larkin) And who are the recipients</p> <p>22 of those funds?</p> <p>23 MS. FRANKLIN: Same objection.</p> <p>24 Q. (By Mr. Larkin) You don't have to name</p> <p>25 them, but I mean what types of people or organizations</p>	<p style="text-align: right;">Page 11</p> <p>1 would be recipients of those funds?</p> <p>2 A. Some of them are sort of community advocacy</p> <p>3 organizations that might be active in certain</p> <p>4 communities that don't really have much interaction,</p> <p>5 usually, with the City.</p> <p>6 So there are community orgs and then there's</p> <p>7 some better, more specifically related to legal</p> <p>8 activities.</p> <p>9 So there's quite a few. I think there's</p> <p>10 maybe -- there's over ten. I'd have to look at the</p> <p>11 list.</p> <p>12 Q. So in this particular investigation, the</p> <p>13 current case involving my client Baja Concrete and</p> <p>14 other parties, you are familiar with this particular</p> <p>15 investigation and the Determination by the OLS, right?</p> <p>16 A. Yes.</p> <p>17 Q. Were you involved in that investigation?</p> <p>18 MS. FRANKLIN: And when you say "you," are</p> <p>19 you referring to the witness herself or the Office of</p> <p>20 Labor Standards?</p> <p>21 MR. LARKIN: For that specific question this</p> <p>22 witness specifically.</p> <p>23 A. I was, in that I was supervising -- I mean I</p> <p>24 supervise all of the investigators. They're all</p> <p>25 direct reports to me.</p>
<p style="text-align: right;">Page 12</p> <p>1 Q. (By Mr. Larkin) So are you familiar with</p> <p>2 the interviews of witnesses that occurred in this</p> <p>3 investigation?</p> <p>4 A. I know that there were interviews of</p> <p>5 witnesses in this investigation.</p> <p>6 Q. Do you know how many there were?</p> <p>7 MS. FRANKLIN: I'm sorry to interrupt you.</p> <p>8 I think these are outside of the scope of</p> <p>9 the questions that Ms. Keppinger is prepared to</p> <p>10 testify on today.</p> <p>11 MR. LARKIN: Okay. That's fine. I'll</p> <p>12 strike that last question.</p> <p>13 Let's go ahead and look at what I believe is</p> <p>14 the Determination. So this is Exhibit 2.</p> <p>15 (Referred Deposition Exhibit No. 2.)</p> <p>16 Q. (By Mr. Larkin) And I'll go ahead and</p> <p>17 scroll through -- this is a longer document -- and</p> <p>18 then I'll come back to the beginning of the document.</p> <p>19 That's, I believe, a 50-page document.</p> <p>20 Back to the beginning. Do you recognize</p> <p>21 this document?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. This is the Findings of Fact, Determination</p> <p>25 and Final order of the Office of Labor Standards in</p>	<p style="text-align: right;">Page 13</p> <p>1 Case No. CAS-2020-00186.</p> <p>2 Q. Did you help or did you participate in the</p> <p>3 preparation of this document?</p> <p>4 A. No, I did not.</p> <p>5 Q. But did you supervise others who prepared</p> <p>6 this document?</p> <p>7 A. Yes.</p> <p>8 Q. As far as the Determination -- we'll get to</p> <p>9 it in a few minutes -- but the dollar amounts that OLS</p> <p>10 has, say, assessed against my client and other parties</p> <p>11 in this Determination, did you participate in</p> <p>12 calculating or coming up with what those damages and</p> <p>13 liquidated damages and so on and equities and stuff,</p> <p>14 did you assist in determining how much those assessed</p> <p>15 amounts were going to be?</p> <p>16 A. I participated in that process kind of</p> <p>17 towards the end, after the investigators had done</p> <p>18 those calculations.</p> <p>19 Q. Okay. Did you verify or check those</p> <p>20 calculations to confirm whether you believed they were</p> <p>21 correct or not?</p> <p>22 A. Yes. Yeah, that's a kind of usual part of</p> <p>23 our investigation.</p> <p>24 Q. So what I'm going to do is skip over some of</p> <p>25 this document.</p>

<p style="text-align: right;">Page 18</p> <p>1 not all the way up to overtime, but something more</p> <p>2 than actual overtime pay for hours in excess of 40</p> <p>3 hours a week?</p> <p>4 MS. FRANKLIN: Objection to form; lacks</p> <p>5 foundation.</p> <p>6 Q. (By Mr. Larkin) If you can respond to that.</p> <p>7 A. I'm not aware of that.</p> <p>8 Q. So you're not aware of any information that</p> <p>9 may have been produced or stated by any witnesses or</p> <p>10 anyone in this investigation to the effect that, for</p> <p>11 lack of a better word, number of hours may have been</p> <p>12 inflated to provide additional compensation to workers</p> <p>13 beyond strictly the number of hours they actually</p> <p>14 worked?</p> <p>15 MS. FRANKLIN: Same objection.</p> <p>16 A. No. That does not sound familiar to me.</p> <p>17 Q. (By Mr. Larkin) I'm going to scroll down a</p> <p>18 little further on this. So that was the section for</p> <p>19 "Violations," the section titled "Nonpayment of</p> <p>20 Overtime."</p> <p>21 And then on the next page, page 20, there is</p> <p>22 a section here, section "B. Minimum Wage."</p> <p>23 As far as minimum wage in this Determination</p> <p>24 resulting from this investigation can you describe --</p> <p>25 and we can get to more details later but can you</p>	<p style="text-align: right;">Page 19</p> <p>1 describe generally what was the issue or issues that</p> <p>2 arose or that were discovered in this investigation</p> <p>3 related to minimum wage?</p> <p>4 A. I believe that some of the workers were</p> <p>5 found to have worked -- when comparing their pay to</p> <p>6 the number of hours worked, they appeared to have been</p> <p>7 paid less than the minimum wage for Seattle workers.</p> <p>8 Q. How did the OLS know or determine the number</p> <p>9 of hours worked by the workers?</p> <p>10 A. Well, some of that was from your client's</p> <p>11 documentation and documentation from other</p> <p>12 respondents. I believe there were some payroll</p> <p>13 records, some pay stubs, but not necessarily complete.</p> <p>14 But I believe Baja did provide some</p> <p>15 summaries of that in the investigation. And also the</p> <p>16 workers reported an idea of the amount of hours that</p> <p>17 they worked generally.</p> <p>18 But the timesheets and the payroll were</p> <p>19 something that we looked at.</p> <p>20 Q. All right. I'll scroll down a little more.</p> <p>21 Still on the same page there's a section, section C.</p> <p>22 titled "Nonpayment of Hours Worked."</p> <p>23 Can you describe what that means?</p> <p>24 A. So for some workers they worked -- they were</p> <p>25 shown to have worked based on the documentation</p>
<p style="text-align: right;">Page 20</p> <p>1 submitted but there was no evidence that they had been</p> <p>2 paid for that work.</p> <p>3 And we asked for that evidence. And that</p> <p>4 evidence is supposed to be maintained by the employer</p> <p>5 under our laws and I believe under state laws.</p> <p>6 Q. So this section then refers to -- if I</p> <p>7 understand correctly -- not to a lack of overtime pay</p> <p>8 or failure to meet minimum wage pay. Here you're</p> <p>9 saying or the OLS is saying in some instances, based</p> <p>10 on the documentation provided to OLS, it appeared that</p> <p>11 some workers just simply did not get paid at all, is</p> <p>12 that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know whether the OLS confirmed that</p> <p>15 with any of the workers?</p> <p>16 A. I would have to look back specifically</p> <p>17 through the file. But I believe there were employees</p> <p>18 who said that they had not been paid for all hours</p> <p>19 worked.</p> <p>20 Q. Okay. This is a bit of an opinion question,</p> <p>21 I guess. Why would a worker work or continue to work,</p> <p>22 you know, multiple time periods if they hadn't gotten</p> <p>23 paid for the previous period?</p> <p>24 MS. FRANKLIN: Objection; argumentative.</p> <p>25 Q. (By Mr. Larkin) Again, if you can provide</p>	<p style="text-align: right;">Page 21</p> <p>1 an answer to that.</p> <p>2 A. I don't know.</p> <p>3 Q. A lot of the objections raised are just to</p> <p>4 preserve them for the record. However, if legal</p> <p>5 counsel instructs you specifically not to answer a</p> <p>6 question, then don't answer it.</p> <p>7 A. Okay.</p> <p>8 Q. I forgot to say that at the beginning.</p> <p>9 Okay. I'll scroll down further.</p> <p>10 Page 21 of this document, section D. is</p> <p>11 titled "Unauthorized Deductions."</p> <p>12 Can you explain what that means.</p> <p>13 A. So an employer is permitted to deduct or</p> <p>14 withhold money from an employee's wages only if they</p> <p>15 have written permission from the employee in advance.</p> <p>16 And it must be for a lawful purpose and be for the</p> <p>17 benefit of the employee.</p> <p>18 So, you know, we see deductions and</p> <p>19 withholdings and et cetera in our paychecks but those</p> <p>20 are only done with express permission. That's a</p> <p>21 provision of state law as you see here.</p> <p>22 And so in this case we found that the</p> <p>23 respondents had withheld or deducted money from wages</p> <p>24 without permission in writing and that the amounts</p> <p>25 that were deducted were not purely for the benefit of</p>

<p style="text-align: right;">Page 22</p> <p>1 the employee.</p> <p>2 Q. So in your experience with the OLS, whether</p> <p>3 it's this investigation or other ones you've</p> <p>4 supervised or been involved in, are there any</p> <p>5 situations where it's permissible or has been</p> <p>6 permitted where a worker who would provide this</p> <p>7 authorization, whether in writing or not, subsequently</p> <p>8 agreed that the deductions be taken out?</p> <p>9 MS. FRANKLIN: Objection; calls for a legal</p> <p>10 conclusion.</p> <p>11 A. I'm sorry. Your question -- can you repeat</p> <p>12 it?</p> <p>13 Q. (By Mr. Larkin) Yes. So are there any</p> <p>14 circumstances that you're aware of -- again, whether</p> <p>15 it's this investigation or different ones -- where</p> <p>16 even though a worker did not provide prior written</p> <p>17 authorization to approve a deduction they could later</p> <p>18 agree to it, essentially say, "Well, I would have</p> <p>19 provided written authorization if I had known I was</p> <p>20 supposed to," or something like that?</p> <p>21 A. That's not something I've seen, no.</p> <p>22 Q. Do you recall in this investigation</p> <p>23 specifically what types of deductions were at issue</p> <p>24 here? What items were deducted?</p> <p>25 A. Yes. I believe it was for rent and tools,</p>	<p style="text-align: right;">Page 23</p> <p>1 perhaps, and gas for transportation.</p> <p>2 Q. I'm going to scroll down to the next page,</p> <p>3 page 22 in Exhibit 2, section E., "Meal and Rest</p> <p>4 Breaks".</p> <p>5 This may have been covered a few minutes ago</p> <p>6 but can you explain what this is referring to here and</p> <p>7 what was the issue in this investigation with meal and</p> <p>8 rest breaks?</p> <p>9 A. Yes. So employers are required to provide</p> <p>10 their employees with paid rest breaks periodically</p> <p>11 during their shifts and also an unpaid 30-minute</p> <p>12 uninterrupted meal break.</p> <p>13 And this is set by state law and I believe</p> <p>14 federal law also speaks to this case.</p> <p>15 And so in this case, while the workers did</p> <p>16 get a meal break, a single meal break and a rest</p> <p>17 break, they did not get them at the frequency that the</p> <p>18 law requires.</p> <p>19 So the law requires that for every four</p> <p>20 hours that you work you receive a ten-minute paid rest</p> <p>21 break. So if you work twelve hours you would be due</p> <p>22 three rest breaks.</p> <p>23 And the law requires that if you work for</p> <p>24 more than five hours you should be provided a</p> <p>25 30-minute meal break.</p>
<p style="text-align: right;">Page 24</p> <p>1 And so let's say you worked 16 hours, you</p> <p>2 would be entitled and you should be providing as the</p> <p>3 employer a meal break every time the employee works</p> <p>4 over five-hour shifts. So that would be three meal</p> <p>5 breaks due.</p> <p>6 And that was not happening based on the</p> <p>7 review of the evidence.</p> <p>8 Q. Okay. More broadly speaking have you been</p> <p>9 involved or supervised OLS investigations in, say, the</p> <p>10 real estate construction sector prior to this one?</p> <p>11 A. Yes.</p> <p>12 MS. FRANKLIN: Are you asking about this</p> <p>13 witness specifically in this case?</p> <p>14 MR. LARKIN: No, that's a question for the</p> <p>15 OLS.</p> <p>16 A. For OLS, yes, we have had construction cases</p> <p>17 before.</p> <p>18 Q. (By Mr. Larkin) Would you say there's been</p> <p>19 a lot of them? Is it a particular industry that is</p> <p>20 investigated a lot?</p> <p>21 MS. FRANKLIN: Objection; outside the scope</p> <p>22 of the 30(b)(6) topics.</p> <p>23 MR. LARKIN: I think it goes to the policy</p> <p>24 of OLS.</p> <p>25 A. Which topic?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. (By Mr. Larkin) I'm sorry. Well, that's</p> <p>2 okay. I'll ask a different question. That's fine.</p> <p>3 How does OLS make a decision as to whether</p> <p>4 to issue a Determination at the conclusion of an</p> <p>5 investigation?</p> <p>6 Or how does it decide when to issue a</p> <p>7 Determination of assessed amounts versus deciding not</p> <p>8 to, closing a file and saying "We're just not going to</p> <p>9 issue a Final Order or Determination in this case"?</p> <p>10 A. So OLS, after an investigation is conducted,</p> <p>11 will either issue a finding of violation or a finding</p> <p>12 of no violation unless the respondents agree to settle</p> <p>13 before an issue of a Determination.</p> <p>14 I'm not sure if that answered your question.</p> <p>15 Q. I think it does.</p> <p>16 So if I understand correctly, for every</p> <p>17 investigation that OLS performs or carries out,</p> <p>18 somewhere along the way there's either a settlement or</p> <p>19 there's going to have to be a finding of Determination</p> <p>20 or a finding of No Determination, is that correct?</p> <p>21 A. That is correct. On rare occasions we do</p> <p>22 dismiss if we realize that, perhaps, like it's not</p> <p>23 within our jurisdiction.</p> <p>24 Q. Not within your jurisdiction. Okay. So</p> <p>25 that makes perfect sense.</p>

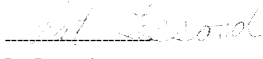

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<p>1 So this particular investigation of my</p> <p>2 client and other parties, speaking for OLS, was this a</p> <p>3 typical investigation or would this be a larger one or</p> <p>4 a more significant one or extreme one than a typical</p> <p>5 investigation?</p> <p>6 MS. FRANKLIN: Objection to form; compound.</p> <p>7 Q. (By Mr. Larkin) Would you describe this as</p> <p>8 a typical OLS investigation?</p> <p>9 A. It's hard for me to say because we</p> <p>10 investigate a lot of different types of employers.</p> <p>11 And some of the issues here, such as difficulty</p> <p>12 obtaining a response to our request for evidence in</p> <p>13 response to the subpoena, that is not typical although</p> <p>14 it has happened.</p> <p>15 But usually employers provide that</p> <p>16 information that's asked of them.</p> <p>17 Q. Okay. So sort of based on that, as a</p> <p>18 followup to that, is it the OLS's view that the</p> <p>19 parties who were investigated in this particular</p> <p>20 investigation were not as cooperative or forthcoming</p> <p>21 as they should have been in responding to requests</p> <p>22 from the OLS?</p> <p>23 A. Yes.</p> <p>24 Q. Could you elaborate on why OLS feels that</p> <p>25 way?</p>	<p>1 A. So when we conduct an investigation we</p> <p>2 follow our administrative rules in Chapter 140 of the</p> <p>3 Seattle Labor Standards Rules and there are timelines</p> <p>4 that are reflected there for response from</p> <p>5 respondents. And generally employers endeavor to</p> <p>6 comply with those.</p> <p>7 In this case we asked repeatedly for</p> <p>8 specific records and information and it was not</p> <p>9 provided. So we requested that this hearing examiner</p> <p>10 issue a subpoena requesting that.</p> <p>11 And there was still -- there was a response</p> <p>12 but there was still some documentation that was not</p> <p>13 provided.</p> <p>14 Q. Okay. I'll scroll down further in</p> <p>15 Exhibit 2.</p> <p>16 So on page 28 of this exhibit there's a</p> <p>17 section titled "Remedies."</p> <p>18 Do you see that?</p> <p>19 A. I see it.</p> <p>20 Q. And scrolling down -- well, actually, just</p> <p>21 below that there's a section, section "A. Back Wages,</p> <p>22 Interest, and Liquidated Damages Payable to Workers."</p> <p>23 Would you mind reading into the record the</p> <p>24 first paragraph of that section A.?</p> <p>25 A. Sure. "OLS finds each of the employees set</p>
Page 28	Page 29
<p>1 forth in Attachment B is owed pay based on hours</p> <p>2 worked from February 2018 and August of 2020. The</p> <p>3 total amount of back wages and interest due to these</p> <p>4 employees is \$792,626.91. This amount includes</p> <p>5 \$631,288.54 in back wages plus 12 percent annual</p> <p>6 interest, calculated monthly."</p> <p>7 Q. Okay. And then just for completeness here,</p> <p>8 would you go ahead and read the next paragraph?</p> <p>9 A. "Under the Wage Theft, Minimum Wage and Paid</p> <p>10 Sick and Safe Time Ordinances, OLS may assess</p> <p>11 liquidated damages in an additional amount of up to</p> <p>12 twice the unpaid compensation, SMC 14.16.080.B;</p> <p>13 SMC 14.19.080.B; SMC 14.20.060.B. In this case, OLS</p> <p>14 assesses \$1,262,577.19 in liquidated damages."</p> <p>15 Q. So is it correct to say that in this case</p> <p>16 OLS assessed the maximum amount of liquidated damages</p> <p>17 that it could?</p> <p>18 A. That's correct.</p> <p>19 Q. And what was the reasoning for assessing the</p> <p>20 maximum amount of liquidated damages?</p> <p>21 A. Well, generally when we are investigating</p> <p>22 and we reach a point where we attempt to settle with</p> <p>23 the employer. That is the preferable avenue because</p> <p>24 it resolves the investigation more quickly and so in</p> <p>25 those cases we might assess less than twice the back</p>	<p>1 wages.</p> <p>2 Here, because of the repeated requests for</p> <p>3 information and some basic information never being</p> <p>4 provided and because of the egregiousness of these</p> <p>5 violations and because we are at a finding stage, we</p> <p>6 assessed the full amount that the ordinances permit us</p> <p>7 to.</p> <p>8 Q. Okay. That was going to be sort of my next</p> <p>9 question is what factors were taken into consideration</p> <p>10 in assessing this maximum amount of liquidated damages</p> <p>11 and you kind of addressed that.</p> <p>12 You mentioned the egregiousness of the</p> <p>13 violations. Can you elaborate on that? Why would</p> <p>14 these be considered egregious?</p> <p>15 A. Well, some violations of the ordinances can</p> <p>16 be more technical in nature or are just purely, you</p> <p>17 know, purely of a notice-type nature. And the</p> <p>18 violations in this case -- and then there are other</p> <p>19 types of violations, you know, ranging from the less</p> <p>20 severe to the more severe.</p> <p>21 So, you know, failing to provide any paid</p> <p>22 sick and safe time to employees under a law that's</p> <p>23 been around for a while, since 2012, is pretty</p> <p>24 serious. Particularly when we look at -- I mean</p> <p>25 particularly the public health crisis that we're in at</p>

<p style="text-align: right;">Page 30</p> <p>1 this time. Employers are required to provide that and 2 they should know that by now. 3 So that is -- we consider that a 4 particularly serious violation. 5 Also, failure to pay people for their labor 6 is a serious violation. Including, you know, whether 7 that is not paying people for any of the hours they 8 worked, some of the hours they worked, or paying them 9 the established overtime rate when they work over 40 10 hours in a week. 11 So that's what I'm referring to. 12 Now I've sort of lost track of your 13 question. 14 Q. It's helpful. I'll ask fewer questions. 15 So prior to this determination against these 16 four parties, are you aware of whether Baja Concrete 17 USA had ever been the subject of a wage claim before? 18 MS. FRANKLIN: Objection; outside the scope 19 of the 30(b)(6) topics. 20 MR. LARKIN: I think it goes to, in part, 21 the decision to assess the maximum liquidated damages. 22 A. Yes, I was aware that there was a case with 23 the state Labor and Industries. 24 Q. (By Mr. Larkin) Okay. Are you aware of any 25 of the details of that case?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. I'm not aware of the details of that case. 2 Q. Do you know, is it the case that that was 3 actually essentially the same wage claim as this one 4 that the City of Seattle OLS investigated? 5 MS. FRANKLIN: I would just advise the 6 witness not to answer the question to the extent that 7 that would reveal the identity of confidential 8 respondents. 9 But you can answer. 10 Q. (By Mr. Larkin) Sure. Don't disclose any 11 names or anything. 12 A. I believe it was related to, you know, the 13 same nucleus of facts, yes, but I don't know the 14 details. 15 Q. Do you know whether, prior to this 16 Determination, whether Newway Forming, Inc. was ever 17 the subject of a wage claim? 18 A. I don't know that. 19 Q. Do you know whether, prior to this 20 Determination, Mr. Antonio Machado or Mr. Roberto Soto 21 Contreras, either of them were ever the subject of a 22 wage claim? 23 A. I don't know that. 24 Q. Would it be a factor that the OLS would 25 consider -- well, would prior wage claims against an</p>
<p style="text-align: right;">Page 32</p> <p>1 employer, or maybe a pattern of wage claims against an 2 employer, would that be a factor that the OLS would 3 consider in assessing the liquidated damages amount? 4 A. That may be a factor. I can say that our 5 ordinances, if there has been a finding of violation 6 under our ordinances previously or a settlement 7 agreement under our ordinances previously the 8 responding party would be considered a second violator 9 and would be subject to increased and additional fines 10 and penalties. 11 Q. That's interesting. So even if there had 12 been a prior settlement agreement of a wage claim 13 matter by one of these respondents or these parties, 14 the fact that there was -- I'm not saying there was 15 one, but if there had been a previous settlement 16 agreement, the OLS would actually count that as a - 17 negative factor or as a strike against that employer 18 when it's determining liquidated damages, that they 19 actually settled a previous case? 20 A. Well, the way that our settlement agreements 21 are structured, respondents always agree that the 22 settlement is treated as a violation. 23 And if you read our rules they dictate that 24 we consider the settlement when we encounter that 25 respondent again and there appears to be or we're</p>	<p style="text-align: right;">Page 33</p> <p>1 prepared to find a violation. 2 Q. So more of a policy question now. Since a 3 settlement agreement in the context of a wage claim, 4 I'll call it, the fact that that can be used 5 essentially against the same employer in a later wage 6 claim matter, doesn't that reduce or even eliminate 7 the incentive of the employer to enter into a 8 settlement agreement? 9 MS. FRANKLIN: Objection; outside the scope 10 of the 30(b)(6) topic. 11 A. I'm sorry. What was the question again? 12 Q. (By Mr. Larkin) Well, it's more a policy 13 question but I will ask it. 14 What would be the incentive for an employer 15 to enter into one of these settlement agreements 16 offered by OLS? 17 MS. FRANKLIN: Same objection. 18 A. Like I had mentioned earlier, generally 19 fines, penalties and liquidated damages may be lower 20 in a settlement, at the settlement stage. 21 Q. (By Mr. Larkin) Okay. And when liquidated 22 damages are assessed, assuming they get paid by the 23 assessed party, does all of that amount, that whole 24 liquidated damages amount, does all of that go to the 25 workers or is there a portion of it retained by the</p>

<p style="text-align: right;">Page 42</p> <p>1 parties that you mentioned?</p> <p>2 A. I believe it is. I would count them just to</p> <p>3 make sure, but yes.</p> <p>4 Q. And is this just a table that shows the</p> <p>5 amount of back wages the OLS believes are owed to each</p> <p>6 of these aggrieved parties as well as the interest in</p> <p>7 liquidated damages that the OLS decided to assess as</p> <p>8 to each one of these aggrieved parties? Is that what</p> <p>9 we're seeing here?</p> <p>10 A. Yes, that's right.</p> <p>11 Q. Okay. Scroll down further. There's</p> <p>12 Attachment C.</p> <p>13 What I would like to do is pull up what I</p> <p>14 believe is the final exhibit, Exhibit 17.</p> <p>15 (Marked Deposition Exhibit No. 17.)</p> <p>16 Q. (By Mr. Larkin) Do you see this document?</p> <p>17 A. I still see the poster.</p> <p>18 Q. Let me try this. Now do you see this?</p> <p>19 A. Yes, now I see a spreadsheet.</p> <p>20 Q. A spreadsheet.</p> <p>21 Have you seen this spreadsheet before?</p> <p>22 A. Yes, I have.</p> <p>23 Q. Okay. So could you describe what this</p> <p>24 spreadsheet is for or what was it created for or what</p> <p>25 it is used for?</p>	<p style="text-align: right;">Page 43</p> <p>1 A. So this spreadsheet was created to calculate</p> <p>2 and lay out what is owed to each worker depending on</p> <p>3 the hours worked, what their hourly rate was, and it</p> <p>4 calculates liquidated damages.</p> <p>5 Q. Okay. So was this spreadsheet created</p> <p>6 either by you or others within the OLS?</p> <p>7 A. It was created at OLS, yes.</p> <p>8 Q. And was it created according to the</p> <p>9 information that was provided by Baja Concrete, Newway</p> <p>10 Forming and the other parties -- well, first of all,</p> <p>11 that question. Was it based on that information</p> <p>12 provided by the parties?</p> <p>13 A. It was based on all of the evidence that</p> <p>14 came in and based on the investigator's assessment of</p> <p>15 the evidence.</p> <p>16 Q. So in addition to evidence that was provided</p> <p>17 is it also correct to say that some of this</p> <p>18 spreadsheet information is based on nonresponsive</p> <p>19 parties or evidence that was not provided?</p> <p>20 A. If does include -- I mean it does include</p> <p>21 employees for whom the respondents did not provide the</p> <p>22 requested information, yes.</p> <p>23 Q. So for this spreadsheet and then for the</p> <p>24 Determination that followed that the parties did not</p> <p>25 provide certain requested documents or information,</p>
<p style="text-align: right;">Page 44</p> <p>1 did the OLS then proceed to make assumptions based on</p> <p>2 that lack of information and based on those</p> <p>3 assumptions fill in information or calculate</p> <p>4 information in this spreadsheet?</p> <p>5 MS. FRANKLIN: Objection; compound.</p> <p>6 A. So yes -- yes.</p> <p>7 Q. (By Mr. Larkin) So a simpler question. So</p> <p>8 certain assumptions were made by OLS in calculating</p> <p>9 these amounts in the spreadsheet?</p> <p>10 A. Yes.</p> <p>11 Q. And again, OLS decided to make assumptions</p> <p>12 because it felt it did not receive all of the</p> <p>13 information that it requested, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Are there provisions of the Seattle</p> <p>16 Municipal Code or other relevant rules and regulations</p> <p>17 that require in a situation like this for OLS to make</p> <p>18 these assumptions?</p> <p>19 MS. FRANKLIN: Objection; calls for a legal</p> <p>20 conclusion.</p> <p>21 A. I believe under all of our ordinances where</p> <p>22 a respondent fails to maintain legally required</p> <p>23 records that they're required to maintain the</p> <p>24 ordinances impose a presumption that the respondent</p> <p>25 violated the ordinance as it relates to the missing</p>	<p style="text-align: right;">Page 45</p> <p>1 records.</p> <p>2 I'm not sure if that answers your question,</p> <p>3 but there's a legal presumption that if an employer</p> <p>4 cannot produce or will not produce legally required</p> <p>5 records, that they violated the ordinance, they can</p> <p>6 rebut that presumption by clear and convincing</p> <p>7 evidence.</p> <p>8 Q. (By Mr. Larkin) So let's just look at this</p> <p>9 page. There's a lot of information in this</p> <p>10 spreadsheet on several different pages, of course.</p> <p>11 But just looking at this page, this is the</p> <p>12 tab titled "OT and Nonpayment."</p> <p>13 And looking at the top of this page of this</p> <p>14 document there's a name here Alberto.</p> <p>15 Do you see that a name?</p> <p>16 A. Yes.</p> <p>17 Q. And it appears that there's a lot of missing</p> <p>18 information here in columns where there's no</p> <p>19 information, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know why? You know, is this because</p> <p>22 the parties did not provide that information to OLS so</p> <p>23 then OLS made an assumption about Alberto?</p> <p>24 A. Yes. This is because we did not receive the</p> <p>25 requested information such as pay stubs.</p>

<p style="text-align: right;">Page 58</p> <p>1 labor violations?</p> <p>2 MS. FRANKLIN: Same objection; outside the</p> <p>3 30(b)(6) topic.</p> <p>4 Q. (By Ms. Kincaid) If you can answer.</p> <p>5 A. Our office is in regular contact with these</p> <p>6 partners and we do talk about our enforcement work and</p> <p>7 we do ask if they have workers who have come to them</p> <p>8 with complaints of labor standards violations.</p> <p>9 MS. KINCAID: Okay. That was all the</p> <p>10 questions that I had. Thank you.</p> <p>11 EXAMINATION</p> <p>12 BY MS. WOLFE:</p> <p>13 Q. I have a couple of questions. My name is</p> <p>14 Nicole Wolfe and I represent Newway Forming in this</p> <p>15 case.</p> <p>16 I'm going to share my screen. So what I</p> <p>17 have pulled up here is the Determination we were</p> <p>18 talking about earlier.</p> <p>19 Can you see that on your screen?</p> <p>20 A. Yes, I can see it.</p> <p>21 Q. And I have scrolled down here to page 28, at</p> <p>22 the bottom of 28 and the top of page 29. And the very</p> <p>23 last sentence of 28 says "A," and then the top page of</p> <p>24 29 says "representative from the Respondents did not</p> <p>25 provide an accurate assessment of hours worked until</p>	<p style="text-align: right;">Page 59</p> <p>1 OLS subpoenaed the information. Additionally,</p> <p>2 Respondent did not provide OLS with the requested</p> <p>3 contact information from employees preventing the</p> <p>4 City's facility to interview more witnesses."</p> <p>5 When you say "respondent" here, who is OLS</p> <p>6 referring to?</p> <p>7 A. I believe we asked for that from all parties</p> <p>8 but I would have to look back at the Request for</p> <p>9 Information to be sure.</p> <p>10 Q. Okay. And then did the OLS request</p> <p>11 documents from Newway Forming related to this</p> <p>12 investigation?</p> <p>13 A. Yes.</p> <p>14 Q. And did Newway Forming provide the requested</p> <p>15 information?</p> <p>16 A. I think they provided some but I think there</p> <p>17 was still information that was not provided.</p> <p>18 Q. Do you know if information was requested of</p> <p>19 Newway that they did not provide?</p> <p>20 A. I would need to review the file more</p> <p>21 closely.</p> <p>22 Q. Does OLS believe that Newway willfully</p> <p>23 interfered with the investigation?</p> <p>24 A. I think our position is that respondents</p> <p>25 jointly interfered.</p>
<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. But OLS is not -- it's your testimony</p> <p>2 today you're not aware exactly what Newway failed to</p> <p>3 provide?</p> <p>4 A. Let me see. I can look back through the</p> <p>5 Finding, through this document, because I believe it</p> <p>6 describes some of the missing documents there.</p> <p>7 Q. Okay. It's okay. We can keep moving on.</p> <p>8 A. Okay.</p> <p>9 Q. I'll stop screen share.</p> <p>10 So in the cases that OLS has investigated</p> <p>11 where a joint employer has an issue, it doesn't matter</p> <p>12 if it resulted in a Determination of not, did any of</p> <p>13 those investigations involve construction sites?</p> <p>14 A. I don't think so. I would have to review</p> <p>15 our database but off the top of my head I don't</p> <p>16 believe so.</p> <p>17 Q. Okay. So is it fair to say that none of the</p> <p>18 joint employer cases involved contractor and</p> <p>19 subcontractor relationships?</p> <p>20 A. Actually I do know -- I'm not certain.</p> <p>21 Sorry.</p> <p>22 MS. FRANKLIN: Object to outside the scope</p> <p>23 of the 30(b)(6) topics.</p> <p>24 Go ahead, Katie Jo. Sorry.</p> <p>25 A. I know we have had previous settlement</p>	<p style="text-align: right;">Page 61</p> <p>1 agreements and investigations in the construction area</p> <p>2 and I am not certain whether they have involved joint</p> <p>3 employment or not. I would have to do a search of our</p> <p>4 database.</p> <p>5 MS. WOLFE: That's all the questions I have.</p> <p>6 Thank you.</p> <p>7 MS. FRANKLIN: I just have a couple of</p> <p>8 questions for the witness.</p> <p>9 MR. LARKIN: Can I ask a couple followups or</p> <p>10 should I go after you?</p> <p>11 MS. FRANKLIN: Go ahead, Alex.</p> <p>12 EXAMINATION</p> <p>13 BY MR. LARKIN:</p> <p>14 Q. So sort of related to a couple of questions</p> <p>15 that were asked by Ms. Kincaid, I'm going to open up</p> <p>16 Exhibit 18 and share screen.</p> <p>17 (Referred Deposition Exhibit No. 18.)</p> <p>18 Q. (By Mr. Larkin) Well, before I share let me</p> <p>19 find the exhibit.</p> <p>20 And this is a topic that would have been</p> <p>21 listed in this 30(b)(6) Notice of Deposition if I had</p> <p>22 been provided with this documentation at an earlier</p> <p>23 date than yesterday.</p> <p>24 Again, sharing screen, this is Exhibit 18</p> <p>25 which we looked at earlier when Mr. Williams was</p>

<p style="text-align: right;">Page 66</p> <p>1 message, responsive message, I suppose, June 30th, 2 2021, it looks like a message from Martin Valencia 3 back to Ashley Harrison. 4 The subject line is response to a request 5 for client support discussion and the message says 6 "Good morning, Ashley. Thank you for speaking to me 7 on the phone yesterday. I reached out to," redacted, 8 "WARN advocate Megan Monahan," et cetera. 9 All I want to know is is this WARN advocate, 10 is that an association of some kind? 11 MS. FRANKLIN: Objection; outside the scope 12 of the 30(b)(6) topics. 13 A. I believe that's another community 14 organization. 15 MR. LARKIN: Okay. That's all I have as a 16 followup so I'll stop sharing. 17 Thank you. No further questions. 18 MS. FRANKLIN: Thank you. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 67</p> <p>1 EXAMINATION 2 BY MS. FRANKLIN: 3 Q. Okay. I'm going to talk to you briefly 4 about liquidated damages and some of the factors that 5 your office considered in assessing the liquidated 6 damages and exercising your discretion. 7 First of all, were you the director's 8 designee in assessing liquidated damages in the Baja 9 case? 10 A. Yes. I'm mean I -- yes, I'm the supervisor 11 and I pass on the decisions of -- I make the 12 decisions, ultimately, before it goes to the director. 13 Q. (By Ms. Franklin) So in determining an 14 appropriate amount of liquidated damages in this case, 15 did you consider the respondents' culpability level 16 with respect to each of the violations? 17 A. Yes. 18 Q. Did you consider the substantive nature of 19 the violations? 20 A. Yes. 21 Q. Did you consider the size of the 22 respondents? 23 A. Yes. 24 Q. Did you consider the revenue of the 25 respondents?</p>
<p style="text-align: right;">Page 68</p> <p>1 A. Yes. 2 Q. Did you consider the human resources 3 capacity of the respondents? 4 A. Yes. 5 Q. And did you consider the amount of 6 liquidated damages assessed in similar cases? 7 A. Yes. 8 Q. Okay. And I have a couple of questions as 9 well about joint employment. 10 When OLS makes a determination as to joint 11 employment -- you mentioned the factors in the Becerra 12 case -- does OLS apply those factors mechanically, 13 like a checklist, or is it more of a holistic 14 economic -- a holistic analysis of the economic 15 realities as a whole? 16 A. We don't look at it in a mechanical way. 17 It's not a checklist. It's more of an overall 18 totality assessment of the circumstances in that 19 particular situation. 20 Q. Okay. And shifting gears a little bit, I 21 just want to clarify a couple things about OLS's 22 relationship to the workers who are aggrieved parties 23 in its cases. 24 So would it be incorrect to refer to such a 25 worker as an OLS client?</p>	<p style="text-align: right;">Page 69</p> <p>1 A. Yeah. That's incorrect. 2 Q. And would referring to a worker as an OLS 3 client transform that worker into an OLS client? 4 A. No, it would not. 5 MS. FRANKLIN: Okay. And now, Lorna, are 6 you able to pull up the Determination? 7 I apologize for my technological ineptitude. 8 Thank you so much. 9 Q. (By Ms. Franklin) So I just want to turn to 10 page two and I'll scroll down just a little bit. I'm 11 scrolling. 12 Okay. Do you see the paragraph that says 13 "There was no overlap in documents produced by the 14 different Respondents"? 15 A. Yes, I see that. 16 Q. Okay. Just take a moment to familiarize 17 yourself with that paragraph if you could. 18 A. Okay. 19 Q. So did Baja provide any credible records of 20 the hours that the employees worked? 21 A. They did not. 22 Q. And did OLS ask for that information? 23 A. Yes. 24 Q. And did Newway provide records of employees' 25 timecards showing punch in and punch out time?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. They did not provide that.</p> <p>2 Q. And to OLS's knowledge did Newway Forming</p> <p>3 maintain those records?</p> <p>4 A. Yes, we believe that they did.</p> <p>5 Q. And did OLS in the course of the</p> <p>6 investigation ask Newway Forming for these records?</p> <p>7 A. Yes.</p> <p>8 Q. And did OLS ask respondents to provide</p> <p>9 contact information for the workers listed on</p> <p>10 Attachment B of this Determination?</p> <p>11 A. Yes.</p> <p>12 Q. And did respondents provide that contact</p> <p>13 information?</p> <p>14 A. They did not.</p> <p>15 Q. Okay. Thank you.</p> <p>16 Just one more moment. I'm just making sure</p> <p>17 I covered everything. Thank you.</p> <p>18 I'm finished with that. I have no further</p> <p>19 questions. Thank you for your time.</p> <p>20 So is everybody finished?</p> <p>21 MR. LARKIN: I am.</p> <p>22 MS. KINCAID: I am as well.</p> <p>23 MS. FRANKLIN: We would like to reserve the</p> <p>24 right to have the witness review and sign the</p> <p>25 deposition, please.</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. LARKIN: Let's see here. Yeah, so we</p> <p>2 will go ahead and order the transcript.</p> <p>3 MS. FRANKLIN: We will as well, with the</p> <p>4 exhibits, please. Thank you.</p> <p>5 MR. LARKIN: Thank you, Ms. Keppinger.</p> <p>6 MS. KINCAID: And Ms. Lessard, this is Sara</p> <p>7 Kincaid. We would also like to request a copy of the</p> <p>8 transcript.</p> <p>9 MS. WOLFE: I would like a copy as well.</p> <p>10 (Deposition recessed at 3:00 p.m.)</p> <p>11</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 72</p> <p>1 SIGNATURE</p> <p>2 I declare under penalty of perjury under the</p> <p>3 laws of the State of Washington that I have read my within</p> <p>4 deposition, and the same is true and accurate, save and</p> <p>5 except for changes and/or corrections, if any, as indicated</p> <p>6 by me on the CHANGE SHEET flyleaf page hereof.</p> <p>7 Signed in _____, Washington,</p> <p>8 this _____ day of _____, 2022.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 KATIE JO KEPPINGER</p> <p>13 Taken: April 28, 2022</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 Re: Appeal of Baja Concrete</p> <p>23 Cause No.: LS-21-002, 003, 004</p> <p>24 Pat Lessard, CCR 2104</p> <p>25</p>	<p style="text-align: right;">Page 73</p> <p>1 CERTIFICATE</p> <p>2 STATE OF WASHINGTON)</p> <p>3) ss.</p> <p>4 COUNTY OF KING)</p> <p>5 I, the undersigned Washington Certified Court</p> <p>6 Reporter, hereby certify that the foregoing deposition upon</p> <p>7 oral examination of KATIE JO KEPPINGER was taken</p> <p>8 stenographically by me on April 28, 2022, and transcribed</p> <p>9 under my direction;</p> <p>10 That the witness was duly sworn by me pursuant to</p> <p>11 RCW 5.28.010 to testify truthfully; that the transcript of</p> <p>12 the deposition is a full, true, and correct transcript to</p> <p>13 the best of my ability; that I am neither attorney for nor</p> <p>14 relative or employee of any of the parties to the action or</p> <p>15 any attorney or counsel employed by the parties hereto, nor</p> <p>16 am I financially interested in its outcome.</p> <p>17 I further certify that in accordance with</p> <p>18 CR 30(e) the witness was given the opportunity to examine,</p> <p>19 read and sign the deposition within 30 days upon its</p> <p>20 completion and submission, unless waiver of</p> <p>21 signature was indicated in the record.</p> <p>22 IN WITNESS WHEREOF, I have hereunto set my hand this</p> <p>23 4th day of May, 2022.</p> <p>24  Pat Lessard,</p> <p>25 pat@court-reporter.com</p> 

19 (Pages 70 to 73)

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BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

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

Respondents.

CASE NO. CAS-2020-00186

FINDINGS OF FACT,
DETERMINATION AND FINAL
ORDER

JURISDICTION

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

PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

I. Parties

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

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

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

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

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

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

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

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

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

II. Respondents all employed the employees in this case.

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

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

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

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

i. Work schedules were set by Newway Forming.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Overtime

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

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

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

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

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

B. Non-Payment of Wages

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

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

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

C. Minimum Wage

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

D. Meal and Rest Breaks

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

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

E. Deductions

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

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

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

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

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

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

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

F. Paid Sick and Safe Time (PSST)

1. Notice of Rights

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

2. Policy

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

3. Accrual

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

4. Notification

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

5. Use

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

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

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

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

DETERMINATION

I. Joint Employment

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

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

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

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

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

A. Baja Concrete and Newway Forming are tightly integrated.

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

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

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

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

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

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

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

B. Newway Forming exercised comprehensive control of the workers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Violations

A. Non-payment of Overtime

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

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

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

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

B. Minimum Wage

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

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

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

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

C. Non-payment of Hours worked

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

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

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

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

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

D. Unauthorized Deductions

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

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

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

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

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

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

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

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

E. Meal and Rest Breaks

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

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

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

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

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

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

1. Back Wages

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

2. Overtime Premium on Missed Break Back Wages

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

3. Interest

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

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

1. Notice of Rights/Poster

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

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

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

2. Policy

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

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

3. Accrual

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

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

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

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

4. Notification

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

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

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

5. Use

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

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

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

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

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

6. Calculations

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

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

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

G. OLS Workplace Poster

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

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

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

H. Record Retention

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

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

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

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

I. Notice of Employment Information

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

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

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

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

J. Wage Payment Notification

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

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

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

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

⁶ SMC 14.20.025(D).

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

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

III. Remedies

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

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

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

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

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

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

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

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

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

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

C. Fines Payable to the City of Seattle

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

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

FINAL DIRECTOR'S ORDER

The Director orders the following remedies.

I. GENERAL TERMS

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

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

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

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

II. FINANCIAL REMEDIES

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

IV. COMPLIANCE MONITORING REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. POLICY & PRACTICE REQUIREMENTS

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

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

VI. PROOF OF COMPLIANCE

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

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

RIGHT TO APPEAL

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

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

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

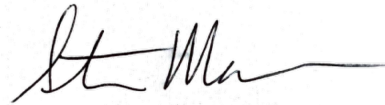
If, within 10 days of receiving this Order, Respondents pay the remedy due to employees and any former employees, which totals \$2,055,204.10, the Director will waive the total civil penalties and fines due to the City of Seattle, which totals \$170,786.20. If, within 15 days of receiving this Order,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

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

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

8/25/21

Date



Steven Marchese
Director
Office of Labor Standards

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

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

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

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

Table 3. Civil Penalties & Fines (Itemization of Civil Penalty & Fine Totals Listed in Tables 1-2)			
IMPORTANT NOTE: Amounts listed in this table are included in the Civil Penalty/Fine totals listed in Tables 1-2 above and are itemized here for informational purposes only. They are not additional amounts to be paid.			
Civil Penalty or Fine (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 (PSST)	\$556.30	38	\$21,139.40

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

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

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



Attachment B – Financial Remedies

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

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

Jose Rodriguez	\$3,415.99	\$443.81	\$1,707.99	\$5,567.79
Josseth Santos	\$1,643.32	\$91.20	\$821.66	\$2,556.17
Josue F. Osuna Tallabas	\$4,973.04	\$442.12	\$2,486.52	\$7,901.68
Julio Caballero 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
GRAND TOTAL	\$1,262,577.19	\$161,338.37	\$631,288.54	\$2,055,204.10

Attachment C - Former Employee Contact Information

[illegible]

**Attachment C -
Former Employee Contact Information**

[illegible]

2021 Seattle Labor Standards Ordinances

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



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

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

SMC 14.19

Minimum Wage

SETS MINIMUM WAGES FOR EMPLOYEES

Large Employers (501 OR MORE EMPLOYEES)

\$16.69
PER HOUR

Small Employers (500 OR FEWER EMPLOYEES)

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

NO

\$16.69
PER HOUR

YES

\$15.00
PER HOUR

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

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

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

SMC 14.16

Paid Sick & Safe Time

REQUIRES PAID LEAVE FOR MEDICAL OR SAFETY ISSUES

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

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

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

Paid Sick & Safe Time (PSST) Rates

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

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

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

SMC 14.17

Fair Chance Employment

LIMITS USE OF CONVICTION AND ARREST RECORDS

Prohibited:

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

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

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

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

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

SMC 14.20

Wage Theft

PROVIDES PROTECTIONS AGAINST WAGE THEFT

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

Written information must include:

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

Examples of pay requirements:

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

SMC 14.30

Commuter Benefits

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

OFFICE OF LABOR STANDARDS

Contact

Employees

File a complaint with OLS or file a lawsuit in court

206-256-5297

www.seattle.gov/laborstandards

Employers

Obtain compliance assistance and/or receive training

810 THIRD AVE, SUITE 375
SEATTLE, WA 98104

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

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

Ordenanzas sobre Normas Laborales de Seattle 2021

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



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

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

SMC 14.19

Salario mínimo

ESTABLECE SALARIOS MÍNIMOS PARA LOS EMPLEADOS

Grandes empleadores (501 EMPLEADOS O MÁS)

\$16.69
POR HORA

Tamaño del empleador

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

Beneficios médicos: pequeños empleadores

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

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

Pequeños empleadores (500 EMPLEADOS O MENOS)

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

NO

\$16.69
POR HORA

SÍ

\$15.00
POR HORA

SMC 14.16

Tiempo remunerado por enfermedad y asuntos de seguridad

REQUIERE PERMISO REMUNERADO POR PROBLEMAS MÉDICOS O DE SEGURIDAD

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

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

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

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

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

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

Devengo del PSST
POR HORAS TRABAJADAS

Acumulación del PSST
no devengado
POR AÑO

NIVEL 1

NIVEL 2

NIVEL 3

Hasta 49
FTE

50 – 249
FTE

250+
FTE

1 hora
POR 40 HORAS

1 hora
POR 40 HORAS

1 hora
POR 30 HORAS

40 horas

56 horas

72 horas**

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

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

SMC 14.17

Oportunidad Justa de Empleo

LIMITA EL USO DE LOS ANTECEDENTES DE CONDENAS Y ARRESTOS

Están prohibidos:

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

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

Los empleadores deben:

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

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

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

SMC 14.20

Robo de salarios

PROPORCIONA PROTECCIÓN CONTRA EL ROBO DE SALARIOS

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

La información escrita debe incluir:

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

Ejemplo de requisitos de pago:

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

SMC 14.30

Beneficios para las personas que viajan diariamente al trabajo

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

OFFICE OF LABOR STANDARDS

Contáctenos al

Empleados

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

Empleadores

Obtener ayuda para el cumplimiento o recibir capacitación

206-256-5297

www.seattle.gov/laborstandards

810 THIRD AVE, SUITE 375
SEATTLE, WA 98104

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

BEFORE THE HEARING EXAMINER CITY OF SEATTLE

OLS CASE NO. CAS-2020-00186

SUBPOENA DUCES TECUM

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

Respondents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Entered this 16th day of July, 2020.

/s/ Ryan Vancil

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

ATTACHMENT #1

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

A. DEFINITIONS

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

B. INSTRUCTIONS

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

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

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

C. DOCUMENTS TO BE PRODUCED FOR THE SUBJECT PERIOD

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

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