

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

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

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

Hearing Examiner File:

Nos.

LS-21-002

LS-21-003

LS-21-004

DECLARATION OF NICOLE E.
WOLFE IN SUPPORT OF
APPELLANT NEWWAY FORMING
INC.'S OPPOSITION TO CITY OF
SEATTLE'S MOTION FOR
SUMMARY JUDGMENT

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

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

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5. Attached hereto as **Exhibit 3**, are relevant excerpts from the transcript of the deposition of Antonio Machado, dated February 1, 2022.

6. Attached hereto as **Exhibit 4**, are relevant excerpts from the Interview Statement of Jonathan Ivan Parra Ponce, dated January 29, 2020

7. Attached hereto as **Exhibit 5**, are relevant excerpts from the transcript of the deposition of 30(b)(6) Baja Concrete USA Corp., dated April 26, 2022.

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

DATED this 3rd day of August, 2022.

OLES MORRISON RINKER & BAKER LLP

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

CERTIFICATE OF SERVICE

The undersigned certified under penalty of perjury under the laws of the state of Washington that on this 3rd day of August, 2022, I caused true and correct copies of the foregoing document, to be delivered to the following parties and in the manner indicated below:

Office of the Hearing Examiner The Hon. Ryan Vancil, Hearing Examiner 700 Fifth Avenue, Suite 4000 Seattle, WA 98104	<input checked="" type="checkbox"/> E-File <input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: Hearing.Examiner@seattle.gov
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Ann Davison, Seattle City Attorney Lorna S. Sylvester, WSBA #29146 Erica R. Franklin, WSBA #43477 Assistant City Attorneys 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7095 Phone: (206) 684-8200 <i>Attorneys for Respondents, The City of Seattle and the Seattle Office of Labor Standards</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: Lorna.Sylvester@seattle.gov erica.franklin@seattle.gov sheala.anderson@seattle.gov Susannah.hanley@seattle.gov
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SIGNED at Seattle, Washington this 3rd day of August, 2022.

s/Catherine A. Trimbour
Catherine A. Trimbour

EXHIBIT 1

Page 1

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OF THE CITY OF SEATTLE

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) No. LS-21-002, 003, 004
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Office of Labor Standards.)

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

9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

Page 1

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KWYNNE FORLER-GRANT 30 (b) (6)

9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

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

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

7 That's what I was informed.

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

10 A. Not to my knowledge.

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

13 A. No.

14 Q. Can you elaborate on that, please?

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

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

22 A. Yes.

23 Q. And who are those individuals?

24 A. Carlos Ibarra and Tony Machado.

25 Q. Anyone else?

1 Roberto and Tom Grant.

2 Q. So maybe I can just ask the question a
3 little differently.

4 So did Newway -- once it started tracking
5 hours of workers on Baja's payroll, did Newway have
6 its own records showing how many hours each worker
7 worked?

8 A. I see what you're saying. No.

9 Q. But wouldn't the time clock records show
10 that information?

11 A. It's just a manual that you put in there and
12 it punches it. And then they go off the cards but the
13 cards pretty much stayed down on the site.

14 Q. I'm sorry. They stayed where?

15 A. Down onsite.

16 Q. And what does that mean?

17 A. The jobsite.

18 Q. Oh, okay. So from the timecards did that
19 show how much a given worker was working?

20 A. Yes. They would punch in and punch out.

21 Q. Did workers who were working on Baja
22 Concrete's payroll use the same punch in/punch out
23 procedure as other workers working on the Newway
24 sites?

25 A. On Newway, are you asking specifically how

1 needed to work on a given day?

2 A. That would be up to their superintendent
3 and our lead, I guess. I don't know.

4 Q. But was it always a Newway employee who
5 determined how many hours the workers on the relevant
6 worksites worked?

7 A. No.

8 Q. Can you elaborate on that?

9 A. That would be Roberto Soto.

10 Q. How did Roberto Soto determine how many
11 hours workers needed to work on a given day?

12 A. It was my understanding that it was eight
13 hours every day. And then if there was a concrete
14 pour late then Roberto would tell his people that they
15 need to stay, his employees.

16 Q. How would Roberto know that there was a
17 circumstance requiring additional hours on a given
18 day?

19 A. A lead would tell him. It was voluntary.

20 Q. Would the lead instruct Roberto to offer his
21 workers additional hours on such a day?

22 A. Would you say that again?

23 Q. Would the lead instruct Roberto to offer
24 additional hours to workers on a day where there was
25 something more to be done?

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

3 A. We may get behind schedule.

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

6 A. Roberto.

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

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

11 Q. And then what would happen after that?

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

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

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

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

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

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

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

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

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

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

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

8 That was our people.

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

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

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

14 A. The construction workers.

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

18 A. Roberto.

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

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

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

24 A. No.

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

1 who were calling out sick?

2 A. You mean we had sick leave?

3 Q. Yes.

4 A. They would let their leads know.

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

7 A. They would ask Roberto Soto.

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

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

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

13 A. Most times, yes.

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

16 A. Newway, no. No.

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

19 A. I have no idea.

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

22 A. No.

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

25 A. No.

1 A. Newway, yes.

2 Q. When you say Newway, did Newway leads tell
3 their units -- I guess did they tell subcontractors
4 what to do?

5 A. Through their superintendents.

6 Q. Okay. Was Roberto the superintendent for
7 Baja?

8 A. Yes.

9 Q. Let me think. Just a moment.

10 So is there anything else that Newway leads
11 were responsible for?

12 A. Possibly just making sure people are
13 attending the safety meetings, their employees, their
14 staff underneath them.

15 Q. Were Newway leads responsible for ensuring
16 that Baja workers attended the safety meeting?

17 A. It's our policy that all subcontractors come
18 to the meetings but that would still be instructed
19 through Roberto.

20 Q. Was there an instruction from Newway to
21 Roberto that Baja workers needed to attend those
22 trainings?

23 A. Yes.

24 Q. Did Newway leads supervise the day-to-day
25 work of their units?

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

3 A. With check stubs.

4 Q. Anything else?

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

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

8 A. Yes.

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

11 A. No.

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

14 A. I have no idea.

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

17 A. No.

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

20 A. No.

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

23 A. No.

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

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

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

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

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

10 A. For Baja?

11 Q. Yes.

12 A. No.

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

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

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

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

1 disciplined?

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

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

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

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

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

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

12 A. No.

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

15 A. No, go ahead.

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

18 A. No.

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

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

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

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

5 A. Yes.

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

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

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

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

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

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

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

21 A. Yes.

22 Q. And what about Baja's?

23 A. Yes.

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

1 A. Yes.

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

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

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

10 What were you talking about there?

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

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

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

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

24 A. No.

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

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

2 What were you referring to there?

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

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

10 A. Yes.

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

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

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

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

21 (Marked Deposition Exhibit No. 13.)

22 MR. WANDLER: Yes.

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

25 A. Yes.

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

2 A. Okay.

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

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

8 A. The scope of work.

9 Q. Where is that defined?

10 A. It's defined by a schedule.

11 Q. Who creates the schedule?

12 A. Onni.

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

14 A. Yes.

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

18 What's discussed at the meeting?

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

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

24 A. Yes.

25 Q. Is it their responsibility to determine how

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

2 A. Yes.

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

6 A. No.

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

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

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

11 BY MR. LARKIN:

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

17 A. Yes.

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

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

23 A. Yes.

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

1 S I G N A T U R E

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

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

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12 KWYNNE GRANT

13 Taken: May 5, 2022

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

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C E R T I F I C A T E

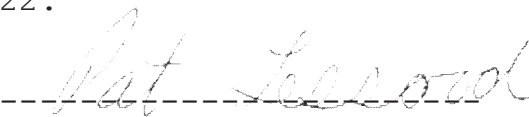
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

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

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



Pat Lessard,
pat@court-reporter.com



EXHIBIT 2

BEFORE THE HEARING EXAMINER
OF THE CITY OF SEATTLE

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Forming and Antonio Machado,)
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ZOOM DEPOSITION UPON ORAL EXAMINATION
OF
DARON WILLIAMS 30 (b) (6)

April 28, 2022

SEATTLE DEPOSITION REPORTERS, LLC

1 A P P E A R A N C E S

2

3 FOR BAJA CONCRETE USA CORP:

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A P P E A R A N C E S

FOR ANTONIO MACHADO:

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1 conclusion.

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

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

7 A. Yes.

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

11 A. That's correct.

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

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

17 A. Yes.

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

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

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

1 introduce are the various witness statements.

2 A. Okay.

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

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

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

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

11 THE WITNESS: That works.

12 (Recess.)

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

17 A. Can you define activity?

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

20 A. Maybe at some point a little.

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

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

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

1 pay rates for the workers?

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

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

5 A. To my understanding, yes.

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

8 A. I think Baja and Newway.

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

13 A. Not to my knowledge.

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

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

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

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

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

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

1 S I G N A T U R E

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

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

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12 DARON WILLIAMS

13 Taken: April 28, 2022

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

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C E R T I F I C A T E


STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

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

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

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



Pat Lessard,
pat@court-reporter.com



EXHIBIT 3

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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

Videotaped Deposition Upon Oral Examination
of
ANTONIO MACHADO

Taken at Remotely via Zoom

DATE: Tuesday, February 1, 2022

REPORTED BY: Jamie Booker, RPR, CCR 3281

A P P E A R A N C E S

For Respondent City of Seattle:

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For Appellant Antonio Machado:

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sara@rockelaw.com

Also Present: CLAUDIA PENUNURI

1 **A. No. I dont' know**

2 SARA KINCAID: Objection to the form.

3 Sorry, Tony. You can go ahead.

4 **THE WITNESS: I don't know. I will talk only to**
5 **my foremen. And then my foremen was communicate with him.**
6 **I don't know what they -- they were talking between the --**
7 **you know, between -- I -- I mean, I understand little bit**
8 **Spanish, not 100 percent.**

9 But, again, I talk to my foreman. If he had any
10 issues with -- relate to me. But I don't know what they
11 talk, you know, between them -- you know, he just grab the
12 guys and go get his work done, and that's pretty much.

13 BY ERICA FRANKLIN:

14 Q. So let me make sure I understand. There were
15 some foremen on the site who was supervising the workers
16 we're calling Baja workers -- worker who are being paid by
17 Baja, and they were --

18 **A. My foremen.**

19 SARA KINCAID: Objection.

20 Sorry. Go ahead.

21 ERICA FRANKLIN: +And there were other foremen
22 who were supervising workers being paid by Newway; is that
23 correct?

24 SARA KINCAID: Objection to the form of the
25 question.

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

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

4 SARA KINCAID: I'll join that objection.

5 (Reporter clarification.)

6 BY ERICA FRANKLIN:

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

9 ALEX LARKIN: Object to the form.

10 SARA KINCAID: I'll join that objection.

11 BY ERICA FRANKLIN:

12 Q. You can answer, Mr. Machado.

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

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

16 Q. Okay.

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

20 Q. Okay. Just one moment.

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

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

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

3 Were amounts ever deducted from their pay?

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

6 BY ERICA FRANKLIN:

7 Q. You can go ahead and answer.

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

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

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

13 BY ERICA FRANKLIN:

14 Q. You can still answer.

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

18 Q. Okay.

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

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

24 BY ERICA FRANKLIN:

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

A F F I D A V I T

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

ANTONIO MACHADO

Date: _____

[illegible]

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

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

To: SARA KINCAID
ROCKE LAW GROUP, PLLC
101 Yesler Way, Suite 603
Seattle, WA 98104
sara@rockelaw.com

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

This letter is to advise you of the following:

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

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

(Sent without signature to avoid delay)

Jamie Booker, RPR, CCR

EXHIBIT 4

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

INTERVIEW STATEMENT

INTERVIEWEE: Johnathan Ivan Parra Ponce (non-disclosure)
Rachael Scheibert (Interpreter)

ADDRESS:

PHONE (HOME) (WORK) NA

NO PERSON MAY RETALIATE AGAINST YOU FOR TESTIFYING IN THIS INVESTIGATION

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

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

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

Background

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

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

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

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

Q: Do you understand what public disclosure means?

INTERVIEW STATEMENT -1

Interviewee Initials SEATTLE-OLS-0998.v2

1 **Yes/No Non-disclosure**

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

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

5 **Yes/No**

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

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

10 **Yes/No**

11 **Background on Interviewee**

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

- 13 - I started around November 2, 2018.

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

- 15 - I left around November 1, 2019.

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

- 17 - February – March 2019. Majority of my work was on Denny Way, we were
18 building two towers that were condos in one but they were apartments.
19 Currently, they are still building it. It's on the corner of Fairview Ave. N and
20 Denny Way. However, from February – March 2019 I was working in
21 Bellevue. Newway and Onni are the main owners of the Project, but we are
22 closely connected to Newway. The only two group of employees on the
23 project was Newway and Baja. We have around 20-25 employees at Baja.
24 Newway also had a project in Bellevue moved us there when they needed help
25 (Feb – March 2019). The owner of Baja Concrete is in Miami but the
26 (foreman/operations manager) is Chilean and his name is Roberto Soto
27 Contereas, he is leading the operations here. The owner of Newway is in
28

Canada and his name is Tony. Baja has Cement, Laborers and carpenters.

Roberto would pay for 60 hours but at the regular rate but not overtime.

Q: How were you paid?

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

Q: How often were you paid?

- Every 15 days.

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

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

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

- Yes, I did and I have some copies.

Q: What benefits did you receive?

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

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

- I was never paid overtime.

Q: Did you receive any bonuses?

- Not that I know of.

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

- No

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

4 Q: Who directed your work?

5 - Roberto.

6 Q: Who hired you?

7 - Roberto.
8

9 Q: How many employees worked for this company?

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

20 Q: How often do employees work in Seattle?

- 21 - Pretty much the whole time is in Seattle.

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

- 23 - No.

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

26 **Wage Theft Ordinance Questions**
27
28

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

- 2 - We all lived in surrounding apartments so he would pick us up or we would
3 report to his house. There were a few minivans and people in cars as well
4 driving us to work each day.

5 Q: What time did you generally start?

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

7 Q: What time did you generally get off?

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

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

- 11 - Typically, 6 days a week. Monday – Saturday.

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

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

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

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

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

- 22 - Roberto kept track of the hours. We have a witness who was the direct
23 foreman of Newway, who knew we were working too many hours and not
24 getting paid. His name was Government's Informant and he was the foreman of
25 Newway from Government's Informant

26 Q: What were the hours documented on?

27
28
INTERVIEW STATEMENT -5

Interviewee Initials SEATTLE-OLS-1002.v2

- 1 - Roberto would have us fill out a form of how many hours you worked at the
2 end of the day and then we signed it and gave it back to him at the end of the
3 week. It was a sheet for a week and we would receive it on Monday or
4 Wednesday. We did that for about 2 months (Nov 2018 – February 2019).
5 Then after that he would tell you to record it on your phone and keep your
6 own record. He would ask for it every 15 days. We usually sent that to him via
7 the Whatsapp app or text.

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

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

11 Q: Were the hours recorded accurate?

- 12 - No, they weren't.

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

14
15 Q: Did your company have a paid sick leave policy?

- 16 - No, he said something paying for medical insurance. When I was sick one day
17 (in the winter) he punished me for being sick. He wouldn't let me work the
18 next day because I called out sick. This happened to a lot of people, but one
19 worker was out of work for 10 days and they wouldn't let him come back to
20 work for a week because he called in sick. The Godfather (Tony), through
21 Roberto, would threaten our immigration status and say he would work to
22 make sure we wouldn't get jobs anywhere else if we called in sick again. That
23 they would call immigration (ICE) on us. I got hurt on the job once and was
24 out for three days and was never paid for them (September 2019).

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

- 26 - No.

27 Q: How much PSST did you receive?

1 - None.

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

3 - No.

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

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

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

9 **Yes/No**

10 - What is the next steps?
11

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

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

17 _____
Date Signed

18 _____
Location (City and State)
19
20
21
22
23
24
25
26
27
28

INTERVIEW STATEMENT -7

Interviewee Initials SEATTLE-OLS-1004.v2

EXHIBIT 5

CITY OF SEATTLE

schedule@balitigation.com

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For Respondents, City of Seattle and The Seattle Office of
Labor Standard (via Zoom):

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Lorna.sylvester@seattle.gov

Also present: Claudia Penunuri

1 Q Was Baja incorporated in order to provide labor to
2 Newway?

3 A Could you please repeat?

4 Q Was the purpose of Baja's formation as a company so
5 that it could provide labor to Newway?

6 A That was, like, the first contract for the company,
7 but I believe the company wanted to do other contracts
8 too.

9 Q Okay. Did Baja register in Washington so that it
10 could work with Newway?

11 A Yeah, correct because that was the only -- the only
12 project, the only agreement that was -- that existed
13 at that time. But also the registration would happen
14 because Baja wanted to have other projects from other
15 companies too.

16 Q So does Baja do business with companies other than
17 Newway?

18 A No, they never get to it.

19 Q So Newway is the only company that Baja has ever done
20 business with is that what you're saying?

21 A Yeah. I think they required a lot of labor. They
22 have many projects. I mean, they were big, but I
23 think there is -- well --

24 MR. LARKIN: It's okay. You
25 answered the question.

C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing deposition of Mercedes Z. De Armas was taken before me and completed on April 26, 2022, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Attorney Erica Franklin.

IN WITNESS WHEREOF, I have hereunto set my signature on the 3rd day of May, 2022.

Michelle D. Elam

Michelle D. Elam, RPR, CCR
Certified Court Reporter 3335

B&A Litigation Services
2208 North 30th Street, Suite 202
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Date: May 3, 2022

To: Alex Larkin
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777 108th Avenue NE
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Bellevue, Washington 98004

Case: In the Matter of the Appeal of: Baja Concrete
USA Corp., Roberto Contreras, Newway Forming
Inc., and Antonio Machado

Witness: Mercedes Z. De Armas

Cause No.: LS-21-002, LS-21-003, LS-21-004

Date Taken: April 26, 2022

The above transcript must be read and the
Correction Sheet signed within 30 days of this notice or
before the trial date. If the Correction Sheet is not
signed within that time period, signature will be deemed
waived for all purposes.

Please contact the witness and arrange a
convenient time and place for reading and signing.

After the Correction Sheet is signed, please mail
the signed original Correction Sheet to:

Erica Franklin
Seattle City Attorney's Office
701 5th Avenue
Suite 2050
Seattle, Washington 98104

Michelle D. Elam, RPR, CCR 3335

Cc: