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6 BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

7 **In the matter of the Appeal of:** ) Hearing Examiner File:  
8 ) **No.: LS-21-002, LS-21-003, LS-21-004**  
9 **BAJA CONCRETE USA CORP., ROBERTO )**  
10 **CONTRERAS, NEWWAY FORMING INC., )** DECLARATION OF LORNA S.  
11 **and ANTONIO MACHADO )** SYLVESTER IN SUPPORT OF  
12 ) RESPONDENT CITY OF SEATTLE’S  
13 from a Final Order of the Decision issued by ) RESPONSE TO APPELLANT BAJA  
14 the Director, Seattle Office of Labor Standards ) CONCRETE USA CORP.’S MOTION  
15 ) FOR PARTIAL SUMMARY JUDGMENT  
16 )

17 I, Lorna S. Sylvester, hereby declare under penalty of perjury under the laws of the State of  
18 Washington, that the following is true and correct to the best of my knowledge:

- 19 1. I am one of the Assistant City Attorneys appearing for Respondents, the City of Seattle and  
20 the Seattle Office of Labor Standards (“OLS”), in the above-captioned matter. I am over the  
21 age of 18 and make this declaration based on personal knowledge. I am competent to testify  
22 as to the matters stated below.
- 23 2. The attached documents are true and correct copies of the following:
- a. Relevant excerpts from the transcript of the Deposition of Kwynne Forler-Grant, on behalf of Newway Forming pursuant to CR 30(b)(6), taken on Thursday, May 5, 2022. This document is attached as **Exhibit A**.
  - b. Relevant excerpts from the transcript of the Deposition of Mercedes de Armas, on behalf of Baja Concrete USA pursuant to CR 30(b)(6), taken on Tuesday, April 26, 2022. This document is attached as **Exhibit B**.
  - c. Relevant excerpts from the transcript of the Individual Deposition of Mercedes de Armas, taken on Wednesday, May 11, 2022. This document is attached as **Exhibit C**.

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- d. Email correspondence from Mercedes De Armas to Ashley Harrison and Daron Williams, dated July 31, 2020. This email is attached as **Exhibit D**.
- e. Email correspondence from Mercedes De Armas to Daron Williams and Ashley Harrison, dated December 7, 2020. This email is attached as **Exhibit E**.

Signed this 3<sup>rd</sup> day of August, 2022, in Kent, Washington.

/s/ Lorna S. Sylvester  
LORNA S. SYLVESTER

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

**EXHIBIT A**  
**TO DECLARATION OF LORNA S. SYLVESTER**

BEFORE THE HEARING EXAMINER  
OF THE CITY OF SEATTLE

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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. )

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

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9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

Page 2

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Page 3

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Page 4

1 EXAMINATION  
 2 ATTORNEY PAGE  
 3 BY MR. LARKIN: 6  
 4 BY MS. FRANKLIN: 43  
 5 BY MR. WANDLER: 109  
 6 BY MR. LARKIN: 112  
 7 BY MS. KINCAID: 118  
 8 BY MS. FRANKLIN: 119  
 9 EXHIBIT INDEX  
 10 No. DESCRIPTION PAGE  
 11 Exhibit 1 City of Seattle and Baja Concrete 9  
 12 USA Corp. Notice of Rule 30(b)(6)  
 13 Deposition to Newway Forming, Inc.  
 14 Exhibit 2 Newway Organizational Chart 1120 10  
 15 Denny Way.  
 16 Exhibit 3 Time Cards. 16  
 17 Exhibit 4 Time Cards. 17  
 18 Exhibit 5 Baja invoices. 19  
 19 Exhibit 6 Newway Crane and/or Rigging 28  
 20 Accident/Incident Notification.  
 21 Exhibit 7 Baja billing backup for invoices. 35  
 22 Exhibit 8 1120 Denny Way Baja Concrete 39  
 23 billing to Newway Forming.  
 24  
 25

Page 5

1 EXHIBIT INDEX  
 2 No. DESCRIPTION PAGE  
 3 Exhibit 9 5/33/20 letter from Seattle Office 40  
 4 of Labor Standards to Antonio  
 5 Machado and others re Seattle  
 6 Labor Standing Ordinances  
 7 violation.  
 8 Exhibit 10 Summary invoices sept/oct 2020 99  
 9 Exhibit 11 Kwynne Grant email to Nancy Chin 100  
 10 re Baja and PNW Shotcrete.  
 11 Exhibit 12 9/17/19 email from Kwynne Grant to 102  
 12 Tom Grant re meeting new supers.  
 13 Exhibit 13 9/18/19 email from Kwynne Grant re 104  
 14 new supers/managers.  
 15 Exhibit 14 1/14/21 email from Kwynne Grant to 106  
 16 Dan DeLue and Inga Shigetani  
 17 forwarding Labor and Industry  
 18 Claims.  
 19 Exhibit 15 Organization chart. 107  
 20  
 21  
 22  
 23  
 24  
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Page 6

1 KWYNNE FORLER-GRANT, being duly sworn, testified  
 2 upon oath, as follows:  
 3 EXAMINATION  
 4 BY MR. LARKIN:  
 5 Q. So Ms. Grant, I'm Alex Larkin. I'm one of  
 6 the lawyers for Baja Concrete USA in this case.  
 7 Just a few basic ground rules for the  
 8 deposition. We have to be careful -- keep in mind  
 9 you're under oath so when responding to questions keep  
 10 that in mind.  
 11 We both need to be careful to avoid talking  
 12 over each other, even if it seems obvious what it's  
 13 going to be. When you're answering a question I have  
 14 to be careful not to talk over you and that's so the  
 15 court reporter can get a good clear transcript of  
 16 this.  
 17 Try to answer with a clear "Yes" or "No"  
 18 where appropriate rather than, you know, "Uh-huh" or  
 19 something like that. Again, so the record can be made  
 20 clear.  
 21 We can take breaks anytime except when there  
 22 is a question pending. So if I've asked a question  
 23 then you do need to respond to the question before  
 24 taking a break. But other than that, anytime you want  
 25 to take a break we can do that.

Page 8

1 border, moving equipment to the jobsites, trucking off  
 2 the jobsites. Oh, gosh.  
 3 All paperwork, insurance, workers comp,  
 4 everything. All the superintendents report to me,  
 5 call me when they need things.  
 6 Basically take care of the subcontractors on  
 7 the sites, anything they need.  
 8 Q. So are you familiar with the project jobsite  
 9 at 1120 Denny Way in Seattle?  
 10 A. Yes.  
 11 Q. Are you familiar with the project site at  
 12 707 Terry Avenue in Seattle?  
 13 A. Yes.  
 14 Q. And one more. Are you familiar with the  
 15 jobsite at 2014 Fairview Avenue in Seattle?  
 16 A. Yes.  
 17 Q. And you're generally familiar with or are  
 18 you familiar with the work that Baja Concrete USA, the  
 19 service they may have provided at those project sites?  
 20 A. Yes.  
 21 Q. We'll get into that a little bit more later.  
 22 And those three project sites, are those  
 23 projects all complete? As far as construction are  
 24 those properties complete?  
 25 A. Not 707 Terry.

Page 7

1 Let's see here. I'm supposed to ask this  
 2 question -- I don't like it -- but are you on any  
 3 medications or have any medical conditions that might  
 4 impair your ability to answer questions today?  
 5 A. No.  
 6 Q. Would you please provide your full name and  
 7 spell it. And your business address or work address.  
 8 A. Okay. It's Kwynne, K W Y N N E, Forler, F O  
 9 R L E R, hyphenated Grant, G R A N T. 133 164th  
 10 Street Southwest, Suite 204, Lynnwood, 98087.  
 11 Q. And have you ever been deposed before in a  
 12 civil case?  
 13 A. No.  
 14 Q. So what is your position or relationship  
 15 with Newway Forming, Inc.?  
 16 A. Senior manager.  
 17 Q. And how long have you been in that position?  
 18 A. I've moved up since receptionist, 22 years.  
 19 Q. You've been with the company for 27 years?  
 20 A. Twenty-two years, yes.  
 21 Q. How long have you been a senior manager?  
 22 A. Probably the last ten.  
 23 Q. Describe, if you would, your typical job  
 24 duties, just a summary.  
 25 A. Everything. Shipping back orders over the

Page 9

1 Q. Okay.  
 2 A. Very close.  
 3 Q. But the other two are complete?  
 4 A. Yes.  
 5 Q. So a bit of an off-the-wall question, to  
 6 your knowledge has Newway Forming, Inc. ever been the  
 7 subject of a wage claim prior to this case?  
 8 A. No.  
 9 Q. So I'm going to introduce the first exhibit.  
 10 I'll share screen. Just give me a moment here.  
 11 (Marked Deposition Exhibit No. 1.)  
 12 Q. (By Mr. Larkin) Okay. Do you see this  
 13 document, Ms. Grant?  
 14 A. Yes.  
 15 Q. Have you seen this before?  
 16 A. Yes.  
 17 Q. I'll scroll through. It's four pages.  
 18 So on the third page where it says Exhibit A  
 19 and it lists items one through eight, have you read  
 20 over that list prior to this deposition?  
 21 A. Yes.  
 22 Q. Okay. Can you confirm that you are prepared  
 23 to answer questions about each of those topics that  
 24 are listed on this page of the document?  
 25 A. Yes.

Page 22

1 Q. And looking at that same page it looks like  
 2 we see some kind of approval down at the bottom of the  
 3 page.  
 4 A. Yes.  
 5 Q. Now is that Newway Forming's approval of  
 6 that invoice so it can be paid?  
 7 A. That's our in-house coding to be paid.  
 8 Q. Okay. And do you know whose initials or  
 9 signature that is on there?  
 10 A. Tom Grant.  
 11 Q. Okay. Scrolling down again. We're moving  
 12 right along today.  
 13 So tell me about Baja Concrete USA Coup.  
 14 Are you familiar with that business?  
 15 A. Yes.  
 16 Q. And how are you familiar with it?  
 17 A. They are a subcontractor of Newway Forming,  
 18 Inc.  
 19 Q. Well, so they were a subcontractor of Newway  
 20 Forming for the three project sites during the  
 21 relevant time period we've been talking about,  
 22 correct?  
 23 A. Yes.  
 24 Q. And how would you describe their scope of  
 25 services that they provided to Newway Forming on those

Page 24

1 needs of the site --  
 2 Q. Okay.  
 3 A. -- where we were working.  
 4 Q. So how did Baja Concrete know how many  
 5 workers or laborers to send to the site on a daily  
 6 basis?  
 7 A. They would discuss that with Roberto. It  
 8 would probably be Tom Grant.  
 9 Q. Tom Grant would decide how many laborers,  
 10 how many cement finishers were needed today for this  
 11 work, something like that?  
 12 A. Yes. He was most familiar with the  
 13 schedule.  
 14 Q. And then he would inform -- just trying to  
 15 be consistent -- Mr. Roberto Soto, correct?  
 16 A. Yes.  
 17 Q. And then when the Baja Concrete laborers  
 18 would come to the worksite do you happen to know how  
 19 they arrived? Did someone give them a ride or did  
 20 they have their own transportation, do you recall?  
 21 A. I didn't find out until later but I guess  
 22 they came in a van.  
 23 Q. But that's something you learned later, not  
 24 during the relevant time period?  
 25 A. No. When the investigation began.

Page 23

1 projects?  
 2 A. They were hired for cement finishing.  
 3 Q. And anything else?  
 4 A. Not until later.  
 5 Q. Later being beyond what we're calling the  
 6 relevant time period?  
 7 A. No, within the time period.  
 8 Q. Okay. So what else were they hired for  
 9 later during the time period?  
 10 A. Labor, laborers.  
 11 Q. Okay. But even when they were hired as  
 12 cement finishers, that's also a laborer, right?  
 13 A. General labor and cement finishing, cement  
 14 finishing is more of a skilled trade.  
 15 Q. Okay.  
 16 A. Patching, grinding.  
 17 Q. And roughly, if you can recall, how many  
 18 laborers were onsite -- let's just kind of focus on  
 19 the Denny Way project site. How many laborers  
 20 provided by Baja Concrete would typically be working  
 21 at that 1120 Denny Way site?  
 22 A. About the scope, I guess, six to twelve.  
 23 Q. Six to twelve pretty much every day that  
 24 work was going on?  
 25 A. It could have varied. It depends on the

Page 25

1 Q. Okay. So Baja Concrete laborers that worked  
 2 onsite, who would direct their actual work activities  
 3 day to day?  
 4 A. Our lead would go to Roberto and inform them  
 5 where they needed to be.  
 6 Q. I didn't quite catch it. Who would go to  
 7 Roberto?  
 8 A. Our lead.  
 9 Q. Okay. Gotcha. So Newway Forming's lead  
 10 would inform Roberto of how many laborers, how many  
 11 cement finishers they needed?  
 12 A. Yes.  
 13 Q. So then when the Baja Concrete laborers were  
 14 onsite at the project sites who would actually direct  
 15 their work?  
 16 A. They were in constant contact with Roberto.  
 17 I think everything pretty much went through him.  
 18 Q. To your memory, to your knowledge, did Tony  
 19 Machado direct the work of Baja Concrete?  
 20 A. Tony was way above, right? I don't think he  
 21 would do the lower end instructing.  
 22 Q. So who would decide when the laborers would  
 23 take a break or, you know, have their lunch? Who  
 24 would make those decisions?  
 25 A. Roberto would make the breaks and the lunch,

Page 34

1 time period, shouldn't we expect to see Baja Concrete  
 2 listed as the company for some of those dates?  
 3 MR. WANDLER: I'm going to object. It  
 4 assumes facts not in evidence. We can't see all those  
 5 sign-in sheets so we don't know if they signed in as  
 6 Baja.  
 7 But you can go ahead and answer.  
 8 A. They should have signed in as Baja for the  
 9 weekly safety meetings. I don't know why they were  
 10 signing in as Newway. I had two verbal conversations  
 11 with Roberto and three emails questioning this.  
 12 Q. (By Mr. Larkin) Okay. Does Newway Forming,  
 13 you know, whether it's maintained here or in Canada,  
 14 do they have these sign-in sheets stored somewhere for  
 15 other meetings, whether it's a safety --  
 16 A. Yes.  
 17 Q. Sorry. Go ahead.  
 18 A. Yes, we do.  
 19 Q. Where are they stored?  
 20 A. 1133 Lynnwood office.  
 21 Q. Here in Lynnwood, Washington?  
 22 A. Yes.  
 23 Q. Okay.  
 24 MR. LARKIN: I'm sure we requested these in  
 25 discovery and I don't recall seeing more than what

Page 36

1 Grant and Roberto Soto, correct?  
 2 A. I don't know if it was so much the hours or  
 3 we were questioning the people. And that's why they  
 4 started going through these invoices a little more  
 5 stringently.  
 6 Q. Let me scroll through this first before I  
 7 ask any more. It's about four pages. Newway  
 8 Bates stamp 2158, I think that is, 2159. Yeah, 22 --  
 9 2213, sorry. 2195.  
 10 Would you look at the third page of this  
 11 Exhibit 7. It looks like there's a signature at the  
 12 bottom.  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. Whose signature is that, if you know?  
 16 A. No, I do not recognize that signature.  
 17 Q. And again, this document, if I understood  
 18 correctly, is a summary of laborers and how many hours  
 19 were reported to have been worked on different days of  
 20 the week, right?  
 21 A. Uh-huh. Yes.  
 22 Q. Thank you. And you just said a moment ago  
 23 something interesting.  
 24 At some point Newway was questioning the  
 25 workers as opposed to hours, am I right?

Page 35

1 we've just looked at here.  
 2 MR. WANDLER: I believe that they all have  
 3 been produced and I believe the email I sent you last  
 4 week directing you to where those are will show you  
 5 where those are at.  
 6 MR. LARKIN: Thanks, Jason. I'll take  
 7 another look at that.  
 8 MR. WANDLER: And just a heads up, I think  
 9 they're scattered throughout a bunch of documents  
 10 because they're attached to different documents and  
 11 stuff so it's a little convoluted finding them.  
 12 MR. LARKIN: All right. I'm going to move  
 13 on to Exhibit 7.  
 14 (Marked Deposition Exhibit No. 7.)  
 15 Q. (By Mr. Larkin) Again, it's in a goofy  
 16 order but do you recognize this document?  
 17 A. Yes.  
 18 Q. What is this document?  
 19 A. This is Baja's billing backup, their  
 20 invoice.  
 21 Q. Would this have been prepared by Mr. Roberto  
 22 Soto?  
 23 A. Yes.  
 24 Q. And that would have been prepared, as you've  
 25 testified earlier, based on the meetings between Tom

Page 37

1 A. Employees, yes.  
 2 Q. What do you mean by that? What was Newway  
 3 Forming questioning?  
 4 A. Tom Grant was questioning "How do I know  
 5 who's onsite?" It's actually two twin towers, 44  
 6 floors. "So how do I know who's actually here?" That  
 7 was when he started.  
 8 And so we asked Roberto Soto for a list of  
 9 his employees, and I noticed right off the bat that we  
 10 were missing at least three and questioned him on it.  
 11 Q. Okay. Meaning for at least three employees  
 12 or workers you're saying that names were appearing on  
 13 these summaries for which you did not have timecards,  
 14 is that correct?  
 15 A. This was earlier on. The timecards weren't  
 16 in the picture, I think, until Tom took over in mid  
 17 2019. This is from 2018.  
 18 Q. So prior to the timecards, gosh, how would  
 19 you have verified whether each of these people on  
 20 these summaries had actually been onsite on the days  
 21 recorded? How would you have done that?  
 22 A. I would say that up until about mid 2019  
 23 until Tom Grant took over I don't think these were  
 24 looked at closely.  
 25 Q. Okay. So it wasn't until the company



Page 38

1 started using the time clock -- that was the moment in  
 2 time, I guess, or point in time where the company  
 3 began to verify whether each of the employees were  
 4 actually onsite, correct?  
 5 A. Yes.  
 6 Q. Scrolling down to the last page of this  
 7 Exhibit 7, is this also -- it's kind of hard to see  
 8 but do you recognize this as also being a shorter  
 9 summary of hours?  
 10 A. I don't -- it looks like maybe a  
 11 supplemental form, maybe somebody they missed or  
 12 something. I'm not sure why there would just be one.  
 13 Q. Do you recognize who apparently signed it at  
 14 the bottom?  
 15 A. I don't recognize the top signature but the  
 16 superintendent at the time was Craig Kuchel.  
 17 Q. Okay. The superintendent employed by Newway  
 18 Forming, correct?  
 19 A. Yes.  
 20 Q. At the top of this page, the fourth page of  
 21 Exhibit 7, clearly it says "Baja Concrete USA  
 22 Timesheet," right?  
 23 A. Yes. It looks like something might have  
 24 been supplemented; maybe they missed billing us for  
 25 somebody. This doesn't look right with just one

Page 40

1 A. Yes.  
 2 Q. And approved -- it looks like, again,  
 3 there's a kind of stamp here in the middle of the  
 4 page. There's an approval there, correct?  
 5 A. Yes.  
 6 Q. And that's Newway Forming's approval so that  
 7 it will pay that invoice, correct?  
 8 A. Yes.  
 9 Q. I'm going to stop the share screen. I don't  
 10 think I need Exhibit 9.  
 11 What was Exhibit 9? Since we have it let's  
 12 just take a quick look at Exhibit 9.  
 13 (Marked Deposition Exhibit No. 9.)  
 14 Q. (By Mr. Larkin) I'll scroll through it.  
 15 Let's go back to the first page of  
 16 Exhibit 9. Do you recognize this document?  
 17 A. Yes.  
 18 MR. WANDLER: Just to interject, I'm going  
 19 to object again on the grounds this is outside the  
 20 scope of the 30(b)(6).  
 21 You can certainly answer questions, but I  
 22 just want everybody to be aware this may be personal  
 23 knowledge and not actually the knowledge of the  
 24 company.  
 25 MR. LARKIN: Okay.

Page 39

1 person on it.  
 2 Q. Okay.  
 3 A. It may be why Craig had to approve it.  
 4 Q. Okay. I'll pull up Exhibit 8.  
 5 (Marked Deposition Exhibit No. 8.)  
 6 Q. (By Mr. Larkin) It looks like this is just  
 7 one page, Exhibit 8.  
 8 Do you recognize this document?  
 9 A. Yes.  
 10 Q. That was "Yes"?  
 11 A. Yes.  
 12 Q. I'm sorry. And again, I think we've seen  
 13 some before but describe what this document is.  
 14 A. This is Baja's billing to Newway.  
 15 Q. Okay. And for this particular -- again,  
 16 this is only a one-page exhibit -- on this particular  
 17 invoice it looks like it relates to the 1120 Denny Way  
 18 project, correct?  
 19 A. Yes.  
 20 Q. So the date -- there's a couple different  
 21 dates but it looks like May 26, 2020, correct?  
 22 A. Uh-huh. Yes.  
 23 Q. Again, this would have been a summary --  
 24 well, based on the summary of hours prepared by or  
 25 agreed to between Tom Grant and Roberto Soto, correct?

Page 41

1 Q. (By Mr. Larkin) So on page one of this  
 2 Exhibit 9, what is this letter? What's your  
 3 understanding of what this is, this document?  
 4 A. This is when the City brought up this  
 5 investigation.  
 6 Q. Okay. And is it correct that this letter --  
 7 I'll click the first page of this document which is  
 8 the beginning of a letter and it's addressed to  
 9 several individuals but also to Newway Forming, Inc.,  
 10 correct?  
 11 A. Yes.  
 12 Q. I guess just based on your knowledge, why  
 13 would the City -- well, again, I'm not being very  
 14 careful here. So let me scroll down to the third page  
 15 of this exhibit which has a title of it or a section  
 16 of it called "Notice of Investigation," correct?  
 17 A. Yes.  
 18 Q. So is it your understanding that this was  
 19 the City of Seattle's notice to all of the parties  
 20 listed at the top of page three that it was  
 21 undertaking an investigation in this matter?  
 22 A. Yes.  
 23 Q. And then scrolling down to the next page,  
 24 the fourth page, do you see a section titled "Initial  
 25 Request for Information"?

Page 54

1 Tony Machado and Roberto Soto by which money was  
 2 flowing out between those two individuals?  
 3 MS. KINCAID: I'll object to the form of the  
 4 question as outside the scope of the 30(b)(6).  
 5 MR. WANDLER: Join in that objection.  
 6 MR. LARKIN: Join the objection.  
 7 MR. WANDLER: And it's already been asked  
 8 and answered.  
 9 Q. (By Ms. Franklin) You can still answer that  
 10 one.  
 11 Was there a relationship with money flowing  
 12 between Tony Machado and Roberto Soto?  
 13 A. No.  
 14 Q. Okay. You mentioned that after the first  
 15 year and a half of the project Newway started tracking  
 16 time for the workers on Baja's payroll, correct?  
 17 A. Yes.  
 18 Q. And can you just tell me approximately what  
 19 date that was, like when was the year and a half?  
 20 A. September 2019.  
 21 Q. So I want to know more about something you  
 22 said before about Newway started tracking time because  
 23 it needed to ensure that the people on the timesheets  
 24 were actually working on the site, is that correct?  
 25 A. Yes.

Page 56

1 Baja was injured and Roberto took him to the doctor.  
 2 And they recorded that he worked for Newway which was  
 3 an untruth.  
 4 So they sent me -- L&I sent me this incident  
 5 report and I went "Well, where is this guy on your  
 6 list of employees that you've been billing us for  
 7 him?"  
 8 So just those kind of questions we started  
 9 having.  
 10 Q. Okay. Beyond tracking hours itself, did  
 11 Newway do anything else to, I guess, to keep a closer  
 12 eye on Roberto after you identified these initial  
 13 irregularities?  
 14 A. That's why they started going through the  
 15 timesheets together. It wasn't the hours, it was Tom  
 16 wanted to know who was onsite when.  
 17 And he thought by asking our office to  
 18 provide the time clock we had was to make sure  
 19 physically they were clocking in and clocking out in  
 20 our office.  
 21 Q. Okay. Just to clarify, when they were  
 22 clocking in and clocking out could Newway see how many  
 23 hours that a given worker was working from those  
 24 records?  
 25 A. It would be my guess at the end of the week

Page 55

1 Q. And when did Newway first become aware that  
 2 there might be people listed who weren't on the site?  
 3 A. I don't think that's where it started. It  
 4 was just some irregularities that started showing up  
 5 and that's when it was decided to ask Roberto Soto his  
 6 list of employees.  
 7 And then when we cross-referenced the bills  
 8 and people that we were getting billed for they were  
 9 not on his list.  
 10 Q. Okay. And when you said irregularities, can  
 11 you tell me what those irregularities were?  
 12 A. Somebody working two days and then leaving  
 13 and the card was whited out and handed to another  
 14 employee.  
 15 Q. And how much time passed between when you  
 16 became aware of the irregularities and when you  
 17 started tracking time yourself for Newway?  
 18 A. A couple weeks.  
 19 Q. Were there any other irregularities?  
 20 A. Gosh, I can't remember if -- there was  
 21 three. I apologize.  
 22 Q. That's okay.  
 23 A. People that were on the timesheet and the  
 24 employees that were unaccounted for, and I knew about  
 25 one. That's how I caught it because this employee of

Page 57

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

Page 58

1 Newway employees?  
 2 Q. Yes.  
 3 A. Newway employees we use a third party and  
 4 they clock in and out on their phones.  
 5 Q. So was the clock, the time clock, was that  
 6 just for the employees on Baja's payroll?  
 7 A. Yes.  
 8 Q. And what about the timecards?  
 9 A. Yes.  
 10 Q. What about for other subcontractors? Did  
 11 Newway keep track of their time?  
 12 A. We didn't have any irregularities that we  
 13 caught and no.  
 14 Q. So when Tom Grant would sit down with  
 15 Roberto to give him information so Roberto could make  
 16 the invoices, what information did Tom Grant provide  
 17 to Roberto?  
 18 A. Roberto already came with his own  
 19 information. I think that was reported back offsite.  
 20 I don't think there was ever really a  
 21 question about the hours, it was just the people.  
 22 Q. How did Baja know -- how did Newway know  
 23 that there was no question about the hours if it  
 24 wasn't checking the hours?  
 25 A. Would you rephrase, say that again?

Page 60

1 Q. So if Roberto had a problem he wasn't sure  
 2 exactly how many hours were used, were worked by his  
 3 workers, could he look to Newway's time clock or  
 4 timecard references to check?  
 5 A. Yes.  
 6 Q. Okay. So Newway did maintain records, its  
 7 own records that you could check against of how many  
 8 hours people worked?  
 9 A. I mean -- I don't know. I guess I don't  
 10 understand the question.  
 11 Q. So I would assume that if Roberto was able  
 12 to use Newway's timecards and time clock records to  
 13 check how many hours a given worker worked, then those  
 14 time clock and timecard hours in fact showed how many  
 15 hours workers worked, is that correct?  
 16 MR. WANDLER: I'm going to object. It  
 17 mischaracterized the testimony as to what Roberto was  
 18 using the time cards for.  
 19 Q. (By Ms. Franklin) Okay. Maybe we should  
 20 back up a step.  
 21 What was Roberto using the timecards for?  
 22 A. He wasn't using the time -- he always had  
 23 his own billings, this whole time he had his own  
 24 billings. He was keeping track somehow. And that's a  
 25 question for them. I don't know.

Page 59

1 Q. So you just stated that there was never  
 2 really any question as to whether the hours that Baja  
 3 reported were correct, right?  
 4 A. Yes.  
 5 Q. But did you also state that Newway was not  
 6 independently tracking the hours of workers on Baja's  
 7 payroll?  
 8 A. No. Not independently, no.  
 9 Q. So if Newway was not independently tracking  
 10 that how did Newway know that the hours that Roberto  
 11 was reporting were correct?  
 12 A. Once Tom and he, Roberto, went through it  
 13 the billing was submitted. And there was no questions  
 14 once Tom and he reviewed it.  
 15 Q. So tell me about the scope of that review.  
 16 What exactly were he and Tom reviewing together?  
 17 A. The timecards and the people.  
 18 Q. Did Tom and Roberto use the timecards to  
 19 verify that the number of hours on the Baja invoices  
 20 were correct?  
 21 A. Roberto typically had his own information.  
 22 We just used -- we just used that, I think, to  
 23 cross-reference. They could have had an issue with  
 24 some hours here and there. That wasn't the  
 25 implementation, the reasoning for the time clock.

Page 61

1 Q. But you mentioned before that Roberto and  
 2 Tom would look at the time clock and timecard records  
 3 in going over things, right?  
 4 A. After Roberto would bring down his invoices  
 5 then Tom would -- they would cross-reference and make  
 6 sure they matched what we had. But he's always kept  
 7 his own records.  
 8 Q. Okay.  
 9 A. How they got that information I don't know.  
 10 That's a question for them.  
 11 Q. When Baja submitted timesheets with its  
 12 invoices, did somebody at Newway sign off on those  
 13 timesheets?  
 14 A. Every superintendent has to sign off on  
 15 invoices or they won't be paid. We have to approve  
 16 those.  
 17 Q. And what does the superintendent do to  
 18 determine whether or not to sign off?  
 19 A. Peruses them. I don't know how they get  
 20 into them.  
 21 Q. Do they check the hours against Newway's own  
 22 records of worker hours?  
 23 A. We didn't keep track of their hours other  
 24 than these time clock sheets that -- you know, Roberto  
 25 would do his invoice and Tom would just cross

Page 86

1 Did you say that Newway or Baja was  
 2 providing both labor and concrete finishing, is that  
 3 correct?  
 4 A. Yes.  
 5 Q. Were some of the workers -- go ahead.  
 6 A. They supplied whoever they had.  
 7 Q. Were some workers laborers and other ones  
 8 concrete finishers?  
 9 A. Yes.  
 10 Q. Did Newway need a certain amount of laborers  
 11 and a certain amount of concrete finishers?  
 12 A. No.  
 13 Q. Did it need any other skillsets in Baja  
 14 workers?  
 15 A. They were hired for cement finishing. And  
 16 then Roberto just offered that he had more people and  
 17 they could labor for us if they needed to. And they  
 18 were already site-oriented so it made more sense then  
 19 going to PeopleReady.  
 20 Q. Did Newway and Roberto have ongoing  
 21 conversations about hiring workers to work on the  
 22 site?  
 23 A. I'm sorry. Can you repeat the first name?  
 24 I didn't hear it.  
 25 Q. Sure. Did Newway and Roberto have ongoing

Page 88

1 Q. Skillset.  
 2 A. Oh, skillset, maybe.  
 3 Q. And then could Newway accept or reject the  
 4 offer of additional people?  
 5 A. Yes.  
 6 Q. Is there a type of worker who would not be a  
 7 good fit for the relevant worksite in the relevant  
 8 time period?  
 9 MR. WANDLER: I'm going to object to the  
 10 form of the question.  
 11 Q. (By Ms. Franklin) You can still answer.  
 12 A. Would you repeat that again?  
 13 Q. Was there a type of worker who would not be  
 14 a desirable worker to have on the site?  
 15 A. At that point I think anybody -- they would  
 16 have hired anybody.  
 17 Q. They just needed bodies?  
 18 A. Yeah, they needed bodies. And then it's up  
 19 to them working. Even with the union, when we'd bring  
 20 in the union people, it would be up to that foreman to  
 21 see if they have the correct skillset. That's for  
 22 Newway.  
 23 Q. But when Baja brought on people did anyone  
 24 at Newway ever determine whether the people Baja was  
 25 bringing on had the skillset that was needed?

Page 87

1 conversations about getting workers to work on the  
 2 site?  
 3 A. No.  
 4 Q. Was it a one-time conversation?  
 5 A. Roberto would just say he's got somebody and  
 6 then they'd bring them to the site.  
 7 Q. What would prompt Roberto to tell Newway  
 8 that he had somebody?  
 9 A. They wanted to use more people.  
 10 Q. So would Newway communicate to Roberto that  
 11 they needed more people?  
 12 A. I don't believe it was ever that way. It  
 13 was the opposite way.  
 14 Q. Can you specify what you mean by that?  
 15 A. Baja -- Roberto would say he has people,  
 16 they need work and they'd go to Newway.  
 17 Q. How did Roberto know that more workers were  
 18 needed?  
 19 A. He didn't. We can go out and hire  
 20 anybody -- Newway can go hire anybody we want to.  
 21 Roberto would say he has people and they need work  
 22 and we hired them. He hired them to bring them on.  
 23 Q. When he did that did he give any information  
 24 to Newway about the people he had?  
 25 A. Like?

Page 89

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

Page 90

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?

Page 92

1 see if I can rephrase that.  
 2 So you said that -- so Baja was the  
 3 subcontractor of Newway, correct?  
 4 A. Yes.  
 5 Q. What was Baja's role in helping Newway with  
 6 the tasks that it was doing for Onni?  
 7 A. Concrete finishing.  
 8 MR. WANDLER: I don't think she got the  
 9 answer.  
 10 A. Cement finishing, concrete finishing.  
 11 Q. (By Ms. Franklin) Okay. Can you just  
 12 explain again -- I'm just not really understanding  
 13 construction -- how did cement finishing fit into the  
 14 job that Newway was being asked to do?  
 15 A. We poured the concrete and they patch it,  
 16 sand it, that kind of thing, build forms to pour the  
 17 concrete in. And then that would be labor force ends  
 18 up finishing.  
 19 Q. Okay. Could Newway have done its job for  
 20 Onni without somebody fulfilling the role that Baja  
 21 was playing?  
 22 A. We have cement finishers on staff.  
 23 Q. But is cement finishing essential to  
 24 Newway's task?  
 25 A. Cement finishing, yes.

Page 91

1 A. We're concrete highrise subcontractors.  
 2 Q. So what does that mean? What are the  
 3 responsibilities associated with that?  
 4 A. All the concrete to build the building.  
 5 Seaco was in charge of the slabs and we're in charge  
 6 of the vertical.  
 7 Q. Anything else?  
 8 A. No. We're a concrete subcontractor.  
 9 Q. And did Newway have a contract with Onni  
 10 requiring it to do these things?  
 11 A. Yes.  
 12 MR. WANDLER: Just to clarify, the contract  
 13 with Onni we're only talking about the Denny site.  
 14 MS. FRANKLIN: Okay. Thank you for the  
 15 clarification.  
 16 Q. (By Ms. Franklin) Did Newway have any  
 17 contracts for the other two site?  
 18 A. Yes.  
 19 Q. Who were those with?  
 20 A. Graham at 707 Terry and Axiom is 2014  
 21 Fairview.  
 22 Q. Okay. Thanks for that clarification.  
 23 So let's go piece by piece, so let's talk  
 24 about 1120 Denny.  
 25 What was Baja's role relative to -- let me

Page 93

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?

Page 94

1 A. I think Tony talked to Roberto and Roberto  
 2 said that he could send a crew over.  
 3 Q. And how were -- you mentioned these tasks  
 4 could be done by many different companies.  
 5 Why did Tony Machado select Baja?  
 6 A. I'm not sure. I mean I could be incorrect,  
 7 it could be the opposite way. I'm just not sure.  
 8 Q. And how were workers dispatched to 2014  
 9 Terry? How did that come to be Baja workers?  
 10 A. Roberto.  
 11 Q. And do you know why Baja selected them?  
 12 A. He just offered staff.  
 13 Q. Were there other subcontractors in the same  
 14 business as Baja?  
 15 A. Not cement finishing. Do you mean for  
 16 Newway?  
 17 Q. Or just in the Seattle area, were there  
 18 other cement -- could they have hired other cement  
 19 finishers besides Baja?  
 20 A. Yeah. We can go to the hall.  
 21 Q. Why did Newway choose Baja over going to the  
 22 hall?  
 23 A. It's just going back to the agreement that  
 24 they had, the oral agreement in Canada.  
 25 Q. Did the oral agreement encompass all three

Page 96

1 A. I visited but I was not down there every  
 2 day.  
 3 Q. Okay. So when you said that Roberto was  
 4 usually there, how do you know that?  
 5 A. Because he was avoiding me but I know the  
 6 day he was there.  
 7 Q. How do you know that specifically?  
 8 A. I had been asking for insurance since 2019  
 9 with us being a lienholder. And I couldn't get any  
 10 response from Claudia Mercedes and so I started  
 11 hounding Roberto.  
 12 And their workers comp expired so I went  
 13 after them for that. And I would just ask "Are you  
 14 guys talking to him?"  
 15 And they're like "Oh, yeah, he answers our  
 16 calls." But I couldn't get ahold of him.  
 17 Q. So do you know that he was in contact with  
 18 them or that he was physically on the site all day?  
 19 A. I can't clarify between the two. I'm not  
 20 sure.  
 21 Q. Okay. And how do you know who was in charge  
 22 when Roberto was not there?  
 23 A. They would just tell me because I was  
 24 looking for him.  
 25 Q. They would tell you that Rios was in charge?

Page 95

1 worksites?  
 2 A. I'm not sure how that came about.  
 3 Q. Okay. Just a minute.  
 4 MS. FRANKLIN: Let's take a five-minute  
 5 break, if we could.  
 6 Can we come back on the record at, I guess  
 7 we'll say 11:47?  
 8 MR. WANDLER: Could we do 11:50, just to  
 9 round up?  
 10 MS. FRANKLIN: We can do 11:50 to round up.  
 11 (Recess.).  
 12 Q. (By Ms. Franklin) I just have a couple more  
 13 questions and then some exhibits.  
 14 Did Newway have a physical office at 1120  
 15 Denny Way?  
 16 A. Yes.  
 17 Q. Did workers who were on Baja's payroll use  
 18 Newway's equipment to perform their day-to-day work?  
 19 A. Everybody brings their own tools, so maybe a  
 20 hammer. Any large equipment is Newway's equipment.  
 21 Q. Did Baja supply any of the equipment itself?  
 22 A. I'm not sure.  
 23 Q. Okay. You mentioned previously that you  
 24 personally were not really on the worksite at 1120  
 25 Denny Way, correct?

Page 97

1 A. Somebody was in charge, Noyes Rios.  
 2 Q. Did they ever tell you that anyone else was  
 3 in charge?  
 4 A. I believe there was. I don't know their  
 5 names.  
 6 Q. How often did you come to a worksite in the  
 7 relevant period?  
 8 A. It used to be every week until about 2019,  
 9 later in 2019.  
 10 Q. And after that through August 2020 how often  
 11 was it?  
 12 A. I didn't go down.  
 13 Q. Sorry?  
 14 A. I didn't go down to the site.  
 15 Q. Okay. So after late 2019 you were never  
 16 there?  
 17 A. Actually, I apologize. Maybe once, I did go  
 18 down once.  
 19 Q. Okay. What is the source of knowledge  
 20 about -- your source of knowledge -- I know you're  
 21 testifying today on behalf of Newway. Where did you  
 22 get your information about breaks and who set those  
 23 breaks?  
 24 A. That was the one question I asked Tom Grant.  
 25 Q. Okay. Did you discuss breaks other than

4/26/2022 Deposition Excerpts:  
Baja Concrete USA 30(b)(6)  
Mercedes de Armas

**EXHIBIT B**  
**TO DECLARATION OF LORNA S. SYLVESTER**

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

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

VIDEOCONFERENCE DEPOSITION OF MERCEDES Z. DE ARMAS  
30(b)(6)

April 26, 2022

Taken Remotely via Zoom

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



Page 2	Page 3
<p>1 APPEARANCES 2 For Appellant Baja Concrete (via Zoom): 3 Alex Larkin 4 MDK Law 5 777 108th Avenue NE 6 Suite 2000 7 Bellevue, Washington 98004 8 425.455.9610 9 alarkin@mdklaw.com 10 For Appellant Newway Forming Inc. (via Zoom): 11 Nicole Wolfe 12 Oles Morrison Rinker Baker 13 701 Pike Street 14 Suite 1700 15 Seattle, Washington 98101 16 206.623.3427 17 wolfe@oles.com 18 For Appellant Antonio Machado (via Zoom): 19 Sara Kincaid 20 Rocke Law Group, PLLC 21 500 Union Street 22 Suite 909 23 Seattle, Washington 98101 24 206.652.8670 25 sara@rockelaw.com For Respondents, City of Seattle and The Seattle Office of Labor Standard (via Zoom): Erica Franklin Lorna S. Sylvester Seattle City Attorney's Office 701 5th Avenue Suite 2050 Seattle, Washington 98104 206.733.9309 erica.franklin@seattle.gov Lorna.sylvester@seattle.gov Also present: Claudia Penunuri</p>	<p>1 EXAMINATION INDEX 2 EXAMINATION BY: PAGE NO. 3 Ms. Franklin 5 4 Ms. Wolfe 128 5 Ms. Kincaid 136 6 Ms. Wolfe 166 7 Mr. Larkin 168 8 9 10 11 12 EXHIBIT INDEX 13 EXHIBIT NO. DESCRIPTION PAGE NO. 14 Exhibit No. 1 4-page Respondent's Notice of Rule 10 30(b)(6) Deposition to Baja Concrete USA Corp 15 Exhibit No. 2 63-page time sheets and invoices, 24 16 Bates APPBAJA0185 through 0247 17 18 Exhibit No. 3 1-page Baja Concrete USA Corp 42 19 Deductions and Contributions 20 Exhibit No. 4 13-page paystubs for Alejandro Fiol, 50 21 Bates APPBAJA0401 through 0413 22 Exhibit No. 5 17-page paystubs for Angel M. Gomez 57 23 Chavez, Bates APPBAJA0414 through 0430 24 Exhibit No. 6 4-page Baja Concrete USA Corp employee 67 25 details Exhibit No. 7 1-page check stub for Antonio Machado, 98 Bates APPBAJA001237</p>
Page 4	Page 5
<p>1 EXHIBITS (Continued) 2 Exhibit No. 8 1-page color photo of business card, 106 3 Bates SEATTLE-OLS-0985 4 Exhibit No. 9 9-page Seattle Office of Labor 172 5 Standards, Initial Request for 6 Information, Bates APPBAJA0154 7 through 0162 8 Exhibit No. 10 1-page Invoice #055, Bates 172 9 SEATTLE-OLS-0256 10 Exhibit No. 11 1-page picture of a letter, To whom it 172 11 may concern, from Claudia Penunuri, 12 dated October 21, 2018, Bates 13 SEATTLE-OLS-0989 14 Exhibit No. 12 5-page email string, Bates 172 15 SEATTLE-OLS-0250 through 0254 16 17 18 19 20 21 22 23 24 25</p>	<p>1 BE IT REMEMBERED that on Tuesday, 2 April 26, 2022, at 9:03 a.m., before Michelle D. 3 Elam, Certified Court Reporter, RPR, appeared via 4 Zoom, MERCEDES Z. DE ARMAS, the witness herein; 5 WHEREUPON, the following 6 proceedings were had remotely: 7 8 &lt;&lt;&lt;&lt;&lt;&lt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt; 9 10 MERCEDES Z. DE ARMAS, having been first duly 11 sworn by the Certified 12 Court Reporter, testified 13 as follows: 14 15 EXAMINATION 16 BY MS. FRANKLIN: 17 Q Good morning, Ms. De Armas. 18 Could you please state your full name, spelling 19 your first and last name. 20 A Mercedes Z. De Armas. First name is Mercedes, 21 M-e-r-c-e-d-e-s. Last name De Armas, is D-e, space 22 A-r-m-a-s. 23 Q Thank you. And my name is Erica Franklin, and I am an 24 attorney for the City of Seattle, and I will be taking 25 your deposition today.</p>

<p style="text-align: right;">Page 6</p> <p>1 I am here today to take your deposition in the 2 Appeal of Baja Concrete USA Corp., Roberto Contreras, 3 Newway Forming, Incorporated, and Antonio Machado, 4 before the Hearing Examiner, in Case Number LS-21-002, 5 003, and 004. 6 Is there any reason, such as unusual stress or a 7 physical or mental condition or the influence of 8 substances that would prevent you from giving truthful 9 testimony today? 10 <b>A Preventing me from what? I'm sorry.</b> 11 <b>Q From providing truthful and complete testimony today?</b> 12 <b>From answering the questions truthfully?</b> 13 <b>A No, other than the fact that in 35 years in the United</b> 14 <b>States, it's the first time I'm involved or I'm in a</b> 15 <b>deposition. So I have no idea what this is. I guess</b> 16 <b>that's what it is.</b> 17 <b>Q That's okay. I'm about to give you some ground rules</b> 18 <b>that will hopefully help you understand this process.</b> 19 I see that Mr. Larkin is in the room where you're 20 seated today. 21 Is anyone else present with you today? 22 <b>A No.</b> 23 <b>Q Thank you.</b> 24 Have you ever testified in an official 25 proceeding, such as a court proceeding?</p>	<p style="text-align: right;">Page 7</p> <p>1 <b>A No, never.</b> 2 <b>Q So let me just give you basic understanding of how a</b> 3 <b>deposition works.</b> 4 Basically I will ask you a question and you will 5 need to provide a direct and nonevasive answer to that 6 question. 7 You need to provide a complete answer to every 8 question. 9 And as you recall, you were put under oath just a 10 few minutes ago, which means that you're required to 11 provide truthful answers to all of my questions. 12 And there are a few things that make a deposition 13 a little bit different than a regular conversation. 14 The court reporter is transcribing this 15 deposition today, which means it's very important that 16 we take turns speaking and that we not speak over one 17 another or interrupt because it's very hard to 18 transcribe a conversation when there are two people 19 talking at once. 20 You also need to provide audible answers. So you 21 need -- for yes-or-no questions, it's better to say: 22 "Yes" or "no" rather than "uh-huh" or "huh-uh" or 23 shaking your head or nodding your head because those 24 types of responses won't come through in the 25 transcript.</p>
<p style="text-align: right;">Page 8</p> <p>1 If you don't know the answer to a question, you 2 need to indicate that you don't know. 3 And if you need to give an estimate rather than a 4 precise answer, you can do that, but you need to 5 indicate that you're just providing that as an 6 estimate. 7 If you don't understand a question, you will need 8 to ask me for clarification because I will assume that 9 if you answer a question without asking for 10 clarification, then you understood my question. 11 I realize we're on Zoom today, and sometimes 12 there can be technical issues. If you have a 13 technical problem or for some other reason you miss a 14 part of my question, please let me know and I'll 15 repeat the question. I will assume that if you answer 16 a question, you have heard the entire question. 17 This might be a long day, and we can take breaks 18 as needed, and you can certainly request a break. But 19 I just ask that we don't take a break while a question 20 is pending. So if I've asked a question, you need to 21 answer that question and then we can take a break. 22 If your attorney, Mr. Larkin, makes an objection, 23 you still need to answer my question, unless he 24 explicitly instructs you not to answer the question. 25 Did all of that make sense to you?</p>	<p style="text-align: right;">Page 9</p> <p>1 <b>A Yes, it does.</b> 2 <b>Q Thank you.</b> 3 Do you have any questions about this process? 4 <b>A I just want you guys to know that even though I have</b> 5 <b>been in the country for a long, long time, English is</b> 6 <b>my second language. And in the legal field -- I mean,</b> 7 <b>there are some questions that I may not understand.</b> 8 <b>But I'm so glad, Erica, that you said that I can</b> 9 <b>ask for classifications if I really don't understand</b> 10 <b>your question or if there is a question that is not</b> 11 <b>clear.</b> 12 <b>Q Absolutely. And please feel free to do so.</b> 13 <b>A Okay.</b> 14 <b>Q So I want to talk to you a little bit about today's</b> 15 <b>deposition, which is a 30(b)(6) deposition.</b> 16 <b>MS. FRANKLIN: And I would like to</b> 17 <b>mark as the first exhibit the deposition notice for</b> 18 <b>today's 30(b)(6) deposition, which I originally</b> 19 <b>labeled as Exhibit L, but I would like to mark that as</b> 20 <b>Exhibit 1 for today's deposition.</b> 21 <b>MR. LARKIN: Erica, did you send the</b> 22 <b>exhibits out?</b> 23 <b>MS. FRANKLIN: No, I did not. I</b> 24 <b>just gave them to the court reporter.</b> 25 <b>THE WITNESS: What is the 30(b)(6)?</b></p>

Page 22	Page 23
<p>1 this information to Baja?</p> <p>2 <b>A What information Roberto -- could you clarify?</b></p> <p>3 <b>Q</b> How did it -- how did this arrangement whereby Roberto</p> <p>4 provided information on worker hours to Baja, how did</p> <p>5 that arrangement come to be?</p> <p>6 <b>A So you're saying that -- how the agreement -- you're</b></p> <p>7 <b>saying that there was an agreement between Roberto and</b></p> <p>8 <b>Baja to provide the workers?</b></p> <p>9 <b>Q</b> Was there an agreement?</p> <p>10 <b>A I don't understand the question. Could you repeat it,</b></p> <p>11 <b>please? I cannot hear well.</b></p> <p>12 <b>Q</b> Sure. Let me try to clarify for you.</p> <p>13 Was there an arrangement in which Roberto</p> <p>14 provided information on the hours that workers worked</p> <p>15 to Baja.</p> <p>16 <b>A Oh, you're asking me if Roberto had an arrangement</b></p> <p>17 <b>with Baja Concrete --</b></p> <p>18 <b>Q</b> Yes.</p> <p>19 <b>A -- for that?</b></p> <p>20 <b>I don't know. I always saw that independently.</b></p> <p>21 <b>Q</b> At some point in time, did Baja talk to Roberto and</p> <p>22 agree that Roberto would provide the service to Baja?</p> <p>23 <b>A Oh, I guess that was all part of the agreement, yeah,</b></p> <p>24 <b>when the company was organized.</b></p> <p>25 <b>Q</b> Okay. Can you tell me about that agreement?</p>	<p>1 <b>A All I know is that Roberto was in charge of all of the</b></p> <p>2 <b>workers, all of the hiring, all the communication.</b></p> <p>3 <b>Everything was directly to Roberto Contreras to the</b></p> <p>4 <b>workers.</b></p> <p>5 <b>Q</b> And who put Roberto in charge of all of those things?</p> <p>6 <b>A I think Roberto and Carlos from Canada. The company</b></p> <p>7 <b>in Canada is also Carlos, the owner of the company in</b></p> <p>8 <b>Canada.</b></p> <p>9 <b>I don't know exactly the agreement in Canada with</b></p> <p>10 <b>them or the company or what it does, but I know that</b></p> <p>11 <b>was when they made the agreement to open the company</b></p> <p>12 <b>here in the USA, and it's coming from the agreement.</b></p> <p>13 <b>And Machado, Newway Forming and Canada -- I mean,</b></p> <p>14 <b>everything to me, the origin is Canada. Baja Concrete</b></p> <p>15 <b>was open, and then he came from Canada, that's where</b></p> <p>16 <b>he came, from Canada, to really take of all of the</b></p> <p>17 <b>labor, to hire them, and to do everything.</b></p> <p>18 <b>Q</b> Okay. But --</p> <p>19 <b>A (Inaudible.)</b></p> <p>20 <b>(Court Reporter requested</b></p> <p>21 <b>clarification.)</b></p> <p>22 <b>THE WITNESS:</b> Repeat what?</p> <p>23 <b>THE COURT REPORTER:</b> The last</p> <p>24 comment you just made. I did not hear the complete</p> <p>25 answer.</p>
<p>1 <b>THE WITNESS:</b> You mean, when I was</p> <p>2 talking about, to me, the agreement happened in Canada</p> <p>3 between Newway, Machado, Carlos, and Roberto?</p> <p>4 That's what I understand. Everything was there.</p> <p>5 Then the company was open in the USA, and then Roberto</p> <p>6 Contreras will come from Canada to take care of all of</p> <p>7 the labors and the workers and everything.</p> <p>8 <b>Q (By Ms. Franklin)</b> Okay. We'll talk a little bit more</p> <p>9 about -- I have some more questions for you about</p> <p>10 Roberto and his relationship with Baja, which I'll</p> <p>11 return to later. But I want to talk to you more about</p> <p>12 recording of hours and tracking hours that the workers</p> <p>13 worked.</p> <p>14 Let's pull up -- this will be Exhibit 2 for</p> <p>15 today's deposition. It's marked H.</p> <p>16 (Exhibit No. 2 marked for</p> <p>17 identification.)</p> <p>18 <b>MS. FRANKLIN:</b> Ed, would you mind</p> <p>19 just scrolling through so that the witness can see the</p> <p>20 full document.</p> <p>21 Thank you.</p> <p>22 <b>Q (By Ms. Franklin)</b> I know it's a bit tedious, and I'll</p> <p>23 ask you about specific pages. I just wanted you to</p> <p>24 know what the whole document was.</p> <p>25 <b>MR. LARKIN:</b> Erica, is this</p>	<p>1 Exhibit A, you said?</p> <p>2 <b>MS. FRANKLIN:</b> It is Exhibit 2 for</p> <p>3 this deposition.</p> <p>4 <b>MR. LARKIN:</b> Exhibit 2.</p> <p>5 <b>MS. FRANKLIN:</b> Okay. Thank you, Ed.</p> <p>6 I appreciate you scrolling through.</p> <p>7 <b>Q (By Ms. Franklin)</b> Let's turn to the second page of --</p> <p>8 actually -- I'm sorry. Let's turn to -- the second</p> <p>9 page will actually work.</p> <p>10 It's marked Bates -- it ends in 0186. I don't</p> <p>11 know if you can see on your screen, but, yeah, the</p> <p>12 second page of that PDF.</p> <p>13 <b>Ms. De Armas,</b> have you seen this document or</p> <p>14 anything like this before?</p> <p>15 <b>A Yes, I have.</b></p> <p>16 <b>Q</b> And can you tell me what it is?</p> <p>17 <b>A Those are the invoices Roberto Contreras prepared for</b></p> <p>18 <b>Newway Forming. And I believe -- the attachment, I</b></p> <p>19 <b>believe, is the hours that he was going to bill. And</b></p> <p>20 <b>so there was a congruency between those hours and the</b></p> <p>21 <b>hours that he would bill to the company for the</b></p> <p>22 <b>workers.</b></p> <p>23 <b>To me, that's not a time card at all. It's just</b></p> <p>24 <b>something that he was using to bill, that's my</b></p> <p>25 <b>understanding, and put it on the invoice. And those</b></p>

Page 26	Page 27
<p>1 invoices are handwritten by Roberto. 2 He would prepare the whole thing, and he will 3 communicate with Newway Forming, Kwynne. There was a 4 person there in the whole time -- I'm sorry. I have 5 to understand that I am Baja Concrete, and sometimes I 6 go through accounting because they were needed for 7 financials, you know, to see the amount of 8 receivables. But anyway, they were prepared by 9 Roberto and given to Newway Forming. 10 Q Okay. So this -- I'm referring to just the part that 11 you can see on the screen. So Page 2 of this PDF, and 12 it's on the top, which is the side of the screen. It 13 says, "Baja Concrete USA Time Sheet." 14 Who prepared that time sheet? So I'm just asking 15 about this particular time sheet. 16 A Roberto Contreras did. 17 Q Do you know whose signature is on the upper right? 18 A I believe he had to get that approved by Newway 19 Forming. And Newway Forming will approve that. That 20 needed to be together with the invoice to be able to 21 get paid. 22 Q Okay. 23 A I don't recognize the signature because I never on the 24 site. I was never on the site, so I don't know the 25 people on the site.</p>	<p>1 Q Okay. But you're prepared today to speak on behalf of 2 Baja? 3 A Yeah. 4 Q Okay. 5 A But Roberto was the one on the site, and Roberto is 6 not part of Baja, even though he put there Baja, I 7 guess he's trying to charge, you know, for the labor 8 because we needed to process -- I have no idea. We 9 needed to process the payroll for those workers. 10 I mean, this is the invoices Roberto Contreras 11 did to collect -- to invoice Newway Forming. I mean, 12 when you see the first page, it says the project that 13 they were -- that he was billing and the amount of 14 hours and the amount of things. So this is, like, the 15 backup that Newway Forming requested to be attached to 16 the invoice. And so that signature belongs to Newway 17 Forming. 18 Q Okay. Who provided the invoice to Newway? 19 A Baja -- Roberto Contreras emailed directly to Kwynne 20 and -- the invoices. And, of course, Claudia was in 21 the emails. 22 Q Okay. Did someone at Baja have any role in the 23 generating of the invoice? 24 A I think he would talk to Claudia regarding this. 25 Q What would they talk about?</p>
Page 28	Page 29
<p>1 A I think just to let her know because he was the one on 2 the field, he was the one with the workers, he was the 3 one taking care of all of the labor, and he was also 4 preparing the invoices for her. And I think he needed 5 to let her know that that was the amount of 6 receivables or invoices. 7 Q Did Baja -- did anyone at Baja have any input into the 8 content of the invoices? 9 A I believe that was Claudia. 10 Q And what kind of input did she provide? 11 A I think it's just to let her know. 12 Q Did anyone -- 13 A You know, Claudia lives in Florida, in Miami. 14 Q Okay. Did anyone at Baja verify that these time 15 sheets were correct? 16 A Did anyone in Baja verify that that time sheet was 17 correct? 18 Q Yeah. 19 A Well, I'm going to tell you, Roberto will -- I believe 20 Roberto will do that. He was the only one because 21 Claudia is in Miami. 22 So -- and I guess the signature of Newway 23 Forming, you are very fine, that that is correct. 24 Newway Forming is saying there, that is correct. They 25 are signing that.</p>	<p>1 So I noticed in the document that they are all 2 signed. So they were saying that that was correct, 3 somebody Newway Forming, because they are all approved 4 by Newway Forming. 5 Q Did Baja do anything to assure itself that Roberto was 6 recording hours correctly? 7 A Well, I'm telling you, as I understand -- I think 8 Claudia knew about it. Claudia has no way to really 9 verify because she's not on the site. There was 10 nobody on the site but Roberto. That's why I was 11 saying, he acted totally independently. And that's 12 part of the agreement that they made, probably. 13 Q Probably or do you know for sure about the agreement, 14 just to clarify? 15 A Well, you know, it's an agreement but it's not in 16 writing, so it's difficult when things are not in 17 writing. So -- and I'm just an agent. I wasn't 18 there. But I can see the document and I can testify 19 that that is Newway Forming approving, and I see the 20 handwriting of Roberto on the invoices, and I know he 21 was doing all of this. And then he was charging to 22 get paid for the company. 23 So it looks like part of the agreement is that 24 Roberto will also bill on behalf of Baja Concrete 25 these things. So he was doing that job, I guess.</p>

Page 34	Page 35
<p>1 Q Okay. How are the time cards created?</p> <p>2 A Well, Roberto -- apparently, what I heard, it was that</p> <p>3 they needed to copy from Newway time cards and they</p> <p>4 needed to put it in that simple thing and that kind of</p> <p>5 way for this invoice. And they prepare a summary for</p> <p>6 the payroll and to put the hours and to put the amount</p> <p>7 of exactly how much the workers were going to get</p> <p>8 paid, according to the hours or whatever.</p> <p>9 I never seen a time card for Baja Concrete.</p> <p>10 Never. A time card, what is a time card? No. But I</p> <p>11 know that some of the -- a worker said -- that came to</p> <p>12 the office said that -- dropping the summaries when</p> <p>13 Roberto couldn't, he said that he was taking the</p> <p>14 summary from Newway time cards.</p> <p>15 I was -- I'm just telling you what I -- I don't</p> <p>16 know if this is okay to say that somebody told me</p> <p>17 that, but I'm telling the truth.</p> <p>18 He said he will copy everything from the Newway</p> <p>19 time cards because they will not allow them out of the</p> <p>20 site, so he needed to prepare a summary.</p> <p>21 And, you know, Mercedes Accounting as a payroll</p> <p>22 company, they don't request any time cards. You just</p> <p>23 need to give them a summary or whatever because the</p> <p>24 company is the one -- Baja Concrete were the ones.</p> <p>25 But the workers were not -- the workers were on</p>	<p>1 Newway Forming, right, on the site of Newway Forming's</p> <p>2 projects. So who knew that was Roberto, if he was</p> <p>3 there, and the Newway Forming project managers and the</p> <p>4 people who was there. So they know.</p> <p>5 Q Okay. So I just -- I want to refer you back to this</p> <p>6 topic, which part of the topic is the method of</p> <p>7 determining the wages owed to workers.</p> <p>8 And Baja paid workers' wages; right?</p> <p>9 A Yes.</p> <p>10 Q Okay. So are you prepared to testify today as to the</p> <p>11 method for determining how much money was owed to</p> <p>12 these workers in wages?</p> <p>13 A Yes.</p> <p>14 Q Okay. Did Mr. -- did Roberto -- were there any</p> <p>15 differences between the hours shown on the time cards</p> <p>16 and the hours in the summary that Roberto prepared?</p> <p>17 A Well, I have never done any checking on that, but to</p> <p>18 me, this is -- what is attached here is not a time</p> <p>19 card. It's a summary of hours to bill Newway Forming.</p> <p>20 If there is any difference -- I don't know if there is</p> <p>21 any difference.</p> <p>22 Q Okay. But does Baja have any documentation of the</p> <p>23 hours that workers worked?</p> <p>24 A You mean the summary?</p> <p>25 Q Any documentation showing how many hours workers</p>
<p>1 worked -- the workers on its payroll worked?</p> <p>2 A We only have the summaries that Roberto will provide.</p> <p>3 He will take that summary from Newway time cards. He</p> <p>4 will -- the workers were at Newway Forming. So ...</p> <p>5 Q Okay.</p> <p>6 A I never seen a time card of Newway Forming, though. I</p> <p>7 always seen the summary that Roberto will prepare for</p> <p>8 the time cards that were signed by Newway Forming.</p> <p>9 MS. FRANKLIN: Let's turn to the</p> <p>10 second page of this exhibit, again, if we can.</p> <p>11 Thank you.</p> <p>12 Q (By Ms. Franklin) Is this what you mean by the</p> <p>13 summary that Roberto would prepare?</p> <p>14 A No, that's not a summary. There was a very detailed</p> <p>15 summary that listed every employee, the hours, and</p> <p>16 there was any details. There were some tools,</p> <p>17 whatever to deduct. Then the total net, because --</p> <p>18 the total net that they supposed to be paid.</p> <p>19 So it was a big -- a detail of every employee,</p> <p>20 total hours and everything. A summary that will</p> <p>21 say -- to be able for payroll to do it. And payroll</p> <p>22 only needed the name of the employee, the hours, and</p> <p>23 he will include the net that needed to be paid to each</p> <p>24 employee because some of the employees, the agreement</p> <p>25 was to pay them a net amount. Workers -- you know, I</p>	<p>1 don't know if all of them. Don't recall. But they</p> <p>2 wanted to --</p> <p>3 MR. LARKIN: Mercedes, it's best if</p> <p>4 you just answer the question directly --</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. LARKIN: -- and not go on.</p> <p>7 THE WITNESS: Yeah, yeah, yeah,</p> <p>8 you're right.</p> <p>9 So could you clarify the question again, Erica?</p> <p>10 Q (By Ms. Franklin) So let's just switch gears a little</p> <p>11 bit.</p> <p>12 Did the summary that -- the summaries that</p> <p>13 Roberto would prepare, did those accurately reflect</p> <p>14 the hours that the workers worked?</p> <p>15 A Well, I always thought those were for billing, and I</p> <p>16 never check anything. But the detailed summary was</p> <p>17 the correct hours.</p> <p>18 Q And, again, for you in this case, that would be Baja.</p> <p>19 So you're speaking on behalf of Baja.</p> <p>20 To Baja's knowledge, were the payroll summaries</p> <p>21 an accurate reflection of the hours that the workers</p> <p>22 truly worked?</p> <p>23 A Well, you see, Roberto was the one who did the</p> <p>24 summary. So if Roberto says those were the hours,</p> <p>25 those were the hours. He was on the site. He was</p>

Page 50	Page 51
<p>1 <b>Roberto said that he was -- he was taking from Newway,</b></p> <p>2 <b>but Newway would not give to him. I understand that</b></p> <p>3 <b>is the property of Newway Forming. So they were</b></p> <p>4 <b>taking this summary from those time cards.</b></p> <p>5 <b>So actually, we didn't need it. We didn't need</b></p> <p>6 <b>it. Why we needed the time cards for Newway Forming?</b></p> <p>7 <b>We needed the amounts, and we trust the amounts were</b></p> <p>8 <b>right, and they were to the payroll processing.</b></p> <p>9 MS. FRANKLIN: Okay. Now let's turn</p> <p>10 to another exhibit. This one was originally marked A.</p> <p>11 And, Ms. Elam, are we on Exhibit 4?</p> <p>12 THE COURT REPORTER: Yes.</p> <p>13 MS. FRANKLIN: So let's mark this as</p> <p>14 Exhibit 4, please.</p> <p>15 (Exhibit No. 4 marked for</p> <p>16 identification.)</p> <p>17 MS. FRANKLIN: And, Ed, could you</p> <p>18 just scroll through so the witness can see the full</p> <p>19 document, please.</p> <p>20 Q (By Ms. Franklin) Okay. Ms. De Armas, do you</p> <p>21 recognize this document?</p> <p>22 A <b>Oh, yeah, those pay stubs. Yeah, I've seen this</b></p> <p>23 <b>document.</b></p> <p>24 Q Okay. Who generated this document?</p> <p>25 A <b>That is Mercedes Accounting, the payroll processor.</b></p>	<p>1 <b>Those are the pay stubs.</b></p> <p>2 Q And were they paid from Baja Concrete's payroll?</p> <p>3 A <b>Yeah, Baja Concrete's payroll.</b></p> <p>4 Q And was Mercedes Accounting working on behalf of Baja</p> <p>5 in producing these pay stubs?</p> <p>6 A <b>No. Mercedes Accounting is not working on behalf of</b></p> <p>7 <b>Baja. Maybe I don't understand the question.</b></p> <p>8 <b>This is Baja Concrete reporting the hours and</b></p> <p>9 <b>Mercedes Accounting is processing the payroll for them</b></p> <p>10 <b>and giving the pay stubs to them, according to the</b></p> <p>11 <b>summary hours that Roberto reported.</b></p> <p>12 MS. FRANKLIN: Okay. Let's look at</p> <p>13 the second page of this PDF, if we could, please. I</p> <p>14 know it's kind of hard to see. Actually, let's scroll</p> <p>15 down just to -- there we go.</p> <p>16 Q (By Ms. Franklin) So was this employee paid on an</p> <p>17 hourly basis?</p> <p>18 A <b>No, not really. Well, it's hard to tell because --</b></p> <p>19 <b>could you show the net pay at the bottom?</b></p> <p>20 MS. FRANKLIN: Can you scroll down a</p> <p>21 bit? Oh, is it up above where it says "Net Pay"?</p> <p>22 THE WITNESS: Yeah. Yeah. This</p> <p>23 is -- this is -- if I see this -- could you go to the</p> <p>24 first page or a little bit up. It doesn't matter</p> <p>25 which one, or you want to see a particular one?</p>
<p>1 Just show me the one you want me to see. It's</p> <p>2 okay. We can go with this one because they are all</p> <p>3 the same.</p> <p>4 Q (By Ms. Franklin) Okay. Can we talk about the one</p> <p>5 we're looking at?</p> <p>6 A <b>Okay.</b></p> <p>7 Q For the record, it says 12/07/2018.</p> <p>8 A <b>Oh, okay.</b></p> <p>9 Q So how was this employee paid, based on this pay stub?</p> <p>10 A <b>Show me the bottom.</b></p> <p>11 MS. FRANKLIN: Okay. Ed, could you</p> <p>12 go down a bit.</p> <p>13 THE WITNESS: Yeah. For instance,</p> <p>14 this employee, in the summary, was that he needed to</p> <p>15 get a net pay for 856.00. If you review some of the</p> <p>16 pay stubs, you will see they are all even numbers.</p> <p>17 They don't have any decimals because he wanted to get</p> <p>18 paid \$856. And then the hours were put in the summary</p> <p>19 by Roberto; right? And there is a bonus there because</p> <p>20 that's rent he was paid to be able to accomplish the</p> <p>21 \$856 that the employee is supposed to get paid,</p> <p>22 according to Roberto's summary.</p> <p>23 So he will say in that summary, net pay 856 for</p> <p>24 this one. And these are the hours, and, you know --</p> <p>25 usually the rate will not show. That's why I was</p>	<p>1 asking you to go through others. So in this case,</p> <p>2 they put the rate. I don't know. Usually</p> <p>3 sometimes -- this is a regular pay, you know, so he</p> <p>4 had -- maybe this employee had a different agreement</p> <p>5 with Roberto. I don't know. But the bonus that you</p> <p>6 see there is just a bonus to be able to come up with</p> <p>7 856.</p> <p>8 Q When you talk about an agreement with Roberto, are you</p> <p>9 talking about a verbal agreement or a written</p> <p>10 agreement?</p> <p>11 A <b>An agreement with what? Roberto?</b></p> <p>12 Q You said the worker had an agreement with Roberto.</p> <p>13 What kind of agreement are you talking about?</p> <p>14 A <b>Yeah. Roberto always said, these are the agreement</b></p> <p>15 <b>with the workers. And how he has it with them, I</b></p> <p>16 <b>don't know. I don't know if it was verbal or written</b></p> <p>17 <b>or he took notes. I have no idea.</b></p> <p>18 <b>But he -- in the report, he will say this guy was</b></p> <p>19 <b>72 hours and he's supposed to be 156 and that's it.</b></p> <p>20 <b>And then the rate -- consider the rate will be 20 in</b></p> <p>21 <b>this case. So anyway.</b></p> <p>22 Q Was Baja willing to take it on faith that the</p> <p>23 employees -- that workers were paid the amount that</p> <p>24 they agreed upon?</p> <p>25 A <b>I'm sorry. Could you repeat the question?</b></p>

Page 66	Page 67
<p>1 Q (By Ms. Franklin) I'm going to turn to -- if you look 2 towards the bottom, there are tax amounts on this 3 document. 4 How did Baja determine the appropriate amount of 5 taxes to withhold? 6 <b>A You mean how the calculation was made to pay the 7 taxes?</b> 8 Q Yeah. How did it determine what amount it should 9 withhold for each of these taxes listed here? 10 <b>A What do you mean, "withhold"? The withholding are 11 done by law, right, by regulation. They have to be 12 done what it is.</b> 13 <b>And all the difference is that we were giving the 14 workers the money to cover those things. And at the 15 same time they will have a net pay that they will 16 want. Because the agreement with them -- with Roberto 17 was the net pay, it was 785.</b> 18 <b>If this is this way, it's because Roberto put in 19 the summary that that is the way it was going to be.</b> 20 Q Okay. I'm going to ask a slightly different question 21 about -- while we're talking about payments to workers 22 listed on Attachment B. 23 Did they make less than workers who worked for 24 Newway but were not on Baja's payroll? 25 <b>A Are you saying that the workers for Baja were paid</b></p>	<p>1 <b>less money than Newway?</b> 2 Q Did they receive less money than workers who were 3 working for Newway but were not on Baja's payroll? 4 MR. LARKIN: I'm going to object to 5 that too. I don't think -- 6 THE WITNESS: No, we have no idea. 7 MR. LARKIN: Mercedes isn't here to 8 testify as to Newway. 9 MS. FRANKLIN: Okay. Just a moment 10 here. 11 I'm figuring out the next line of questioning. 12 Okay. If we could pull up another exhibit, 13 please. This one is marked E, and I believe we're on 14 Exhibit 6 for this deposition. 15 (Exhibit No. 6 marked for 16 identification.) 17 MS. FRANKLIN: And if you could just 18 scroll down, if you wouldn't mind, so she can see the 19 full document. 20 Q (By Ms. Franklin) Okay. Ms. De Armas, can you see 21 this okay? 22 <b>A Yeah.</b> 23 Q Okay. And are you familiar with this document? 24 <b>A It's a payroll detail -- employee information.</b> 25 Q Okay. And who generated this document?</p>
<p>Page 68</p> <p>1 <b>A That is somebody requested that from the payroll 2 department -- from the payroll.</b> 3 Q And if you look at the second-to-last column, it looks 4 like -- do pay rates vary from employee to employee? 5 <b>A Yeah.</b> 6 Q And why was that? 7 <b>A You know, if a worker works 80 hours or a hundred 8 hours or whatever it is and they are paid a net, the 9 way to get how much -- the rate that he's paying is 10 dividing, you know, the total that he's receiving by 11 the hours and then you get the regular rate. And, you 12 know, in the system, that's done automatically in the 13 case of the peace work.</b> 14 <b>So -- and also, I remember -- if this is 2019 and 15 '18 -- this is 2020. This was done in -- because 16 Roberto will give the rate the employee was getting 17 paid.</b> 18 <b>I remember he mentioned every employee -- suppose 19 they were helpers, suppose they were finishers, 20 suppose they -- have more experience than another. So 21 it's normal that the rates are different.</b> 22 Q Okay. Would these pay rates be reflected in the 23 invoices that Baja sent to Newway? 24 <b>A No. As you recall, the invoice has a different hourly 25 rate. It's a little bit more than that. And I cannot</b></p>	<p>Page 69</p> <p>1 <b>say that it would be the same because the rate will 2 change, Roberto will increase sometimes the rate to 3 some employees. You know what I mean? There will be 4 sometimes changes on that.</b> 5 <b>At the moment this was printed, that was probably 6 the case in 2019 and '20. But after that, it's 7 probably higher.</b> 8 Q So if an invoice has reflected a higher amount of 9 pay -- a higher rate of pay than the actual rate, 10 where did the difference go? 11 <b>A Well, you know, the difference goes to all of the 12 government, to the IRS. You know, the company pays 13 50 percent of all of the FICA, social -- all of the 14 FICA that needs to be paid. So the difference goes to 15 expenses.</b> 16 Q When -- 17 <b>A That's what I'm telling you, it's not a good deal for 18 Baja. It never was.</b> 19 Q When Baja billed Newway for the amount due its 20 workers, did it account for payroll taxes? 21 <b>A I'm sorry. Could you repeat, Erica?</b> 22 Q Sure. 23 When Baja billed Newway, did those invoices 24 account for payroll taxes that Baja would need to pay? 25 <b>A It should be. It should have been included</b></p>

Page 70	Page 71
<p>1 <b>everything, yes.</b></p> <p>2 Q So --</p> <p>3 A <b>It should have included everything.</b></p> <p>4 Q So can you help me understand what you mean, then,</p> <p>5 when you said -- I was asking if the invoice amount</p> <p>6 pay rate is higher than the actual pay rate. I think</p> <p>7 you said a minute ago the difference goes to taxes.</p> <p>8 But you're also saying that the --</p> <p>9 A <b>Taxes and expenses.</b></p> <p>10 Q But you're saying the invoice already accounts for</p> <p>11 taxes and expenses; is that right?</p> <p>12 A <b>Yeah. And I'm saying it wasn't enough.</b></p> <p>13 Q Did the difference go to anything other than taxes and</p> <p>14 expenses?</p> <p>15 A <b>No. All will go to taxes and expenses for the</b></p> <p>16 <b>company. Always go to every expenses. And, you know,</b></p> <p>17 <b>all the expenses and all of the -- that the company</b></p> <p>18 <b>will have.</b></p> <p>19 Q Did Baja bill Newway for -- for amounts that it stated</p> <p>20 were due to workers and then used that -- used the</p> <p>21 money it received for something other than paying</p> <p>22 workers?</p> <p>23 A <b>What do you mean? Could you clarify that?</b></p> <p>24 Q Yes.</p> <p>25 Okay. So you said that Baja used -- when Baja</p>	<p>1 billed Newway for one amount -- for one rate of pay</p> <p>2 and then the worker ended up receiving a lower rate of</p> <p>3 pay, you said that the difference went to Baja's</p> <p>4 expenses; is that correct?</p> <p>5 A <b>Yeah.</b></p> <p>6 Q So are you saying that Baja billed Newway for an</p> <p>7 amount that it stated to Newway would be used to pay</p> <p>8 workers and, in fact, Baja used that money to pay</p> <p>9 other expenses besides payroll expenses?</p> <p>10 A <b>Well, everything -- you know, everything is included</b></p> <p>11 <b>in a rate. Everything. If I give you a worker and</b></p> <p>12 <b>I'm going to charge you for that worker, even profit</b></p> <p>13 <b>should be included in that rate and all the expenses</b></p> <p>14 <b>that I have for that worker, because Baja is a</b></p> <p>15 <b>business, it's a corporation. It has licensing, it</b></p> <p>16 <b>has all kinds of things. It has Mercedes Accounting,</b></p> <p>17 <b>it has all kinds of things that I need to have to pay</b></p> <p>18 <b>for payroll services, I mean, administrative. All</b></p> <p>19 <b>kinds of things.</b></p> <p>20 <b>So that rate should include all kinds of expenses</b></p> <p>21 <b>in the invoice to Newway to be able to operate and</b></p> <p>22 <b>have the payroll, you have to include all of that in</b></p> <p>23 <b>there. And even profit. Nobody works for free.</b></p> <p>24 Q So Baja billed -- are you saying that Baja billed</p> <p>25 Newway for a certain amount for labor and used some of</p>
<p>1 that money for something other than paying workers?</p> <p>2 Just to make sure I'm clear on your answer.</p> <p>3 A <b>No. There's no other than paying workers, no. It's a</b></p> <p>4 <b>business. The business is providing labor for Newway.</b></p> <p>5 <b>To run that business, there are always other expenses.</b></p> <p>6 <b>So that rate that Newway Forming and Roberto</b></p> <p>7 <b>Contreras, or whatever -- whoever did it, agree,</b></p> <p>8 <b>should include the whole thing. In this case, it was</b></p> <p>9 <b>paid to Baja Concrete. Okay.</b></p> <p>10 <b>Baja Concrete has the invoice. That \$42 per hour</b></p> <p>11 <b>or \$44 per hour should include all of the expenses</b></p> <p>12 <b>because, you know, it's providing labor. There are</b></p> <p>13 <b>many companies that provide labor and they will have</b></p> <p>14 <b>to include even profits on the labor.</b></p> <p>15 Q Okay. Just one moment, please.</p> <p>16 So just to clarify, the answer is -- the answer</p> <p>17 to the question of whether there was the amount billed</p> <p>18 for labor went to something other than paying</p> <p>19 employees, the answer is that -- to that question is</p> <p>20 yes; is that correct?</p> <p>21 MR. LARKIN: Object to the extent</p> <p>22 that that mischaracterizes her testimony.</p> <p>23 Q (By Ms. Franklin) Okay. Let me just ask you -- I'm</p> <p>24 really just looking for a yes or no.</p> <p>25 Did the amount that Baja billed to Newway for</p>	<p>1 labor costs, did Baja use some of that for something</p> <p>2 other than paying workers.</p> <p>3 A <b>I think I answered that.</b></p> <p>4 MR. LARKIN: Yeah, same objection --</p> <p>5 or different objection. Asked and answered multiple</p> <p>6 times.</p> <p>7 Q (By Ms. Franklin) Okay. I have some questions about</p> <p>8 paying workers.</p> <p>9 In what form were the workers paid?</p> <p>10 A <b>In what form?</b></p> <p>11 Q Like, a check, direct deposit, cash?</p> <p>12 A <b>No, never cash. It was always through a paycheck.</b></p> <p>13 Q Okay. How frequently were workers paid?</p> <p>14 A <b>Every two weeks.</b></p> <p>15 Q Did Baja provide pay stubs like the one that we looked</p> <p>16 at previously to its workers?</p> <p>17 A <b>Yes. They were all sent by the payroll company to</b></p> <p>18 <b>Roberto Contreras and copy Claudia.</b></p> <p>19 Q And where -- strike that.</p> <p>20 During the relevant period, was Baja aware that</p> <p>21 workers felt that they were being underpaid?</p> <p>22 A <b>I'm sorry. Could you repeat the question?</b></p> <p>23 Q During the relevant time period, was Baja aware that</p> <p>24 at least certain workers felt they were being</p> <p>25 underpaid?</p>



Page 86	Page 87
<p>1 MS. FRANKLIN: I'm talking about 2 Baja, I'm talking about the US -- Baja Concrete USA. 3 Q (By Ms. Franklin) So when did individuals who were -- 4 people who were working for Newway first come into 5 contact with people who were working for Baja Concrete 6 USA? 7 A <b>Okay. You have to repeat that. Sometimes I cannot</b> 8 <b>hear well, what you are saying.</b> 9 Q Oh, sure. Sorry. It can be hard over Zoom. 10 A <b>Yeah.</b> 11 Q When did people who were working for Newway first come 12 into contact with people who worked for Baja Concrete 13 USA? 14 A <b>I don't know any of that. Roberto would know.</b> 15 Q Why would Roberto know? 16 A <b>Remember, this is an agreement coming from Canada, and</b> 17 <b>they made the agreement there. And, you know,</b> 18 <b>everything comes to him in the USA. So Roberto is</b> 19 <b>part of the agreement -- a partner there -- I don't</b> 20 <b>know exactly why he's in Canada. So it was set up</b> 21 <b>there.</b> 22 Q When did the companies Newway Forming and Baja 23 Concrete USA first interact with one another? 24 A <b>I don't know.</b> 25 Q Are you prepared today to testify about the origins of</p>	<p>1 the relationship between Newway Forming and Baja 2 Concrete as Baja's representative? 3 A <b>As the origins of Baja Concrete USA?</b> 4 Q The origins of the relationship between Baja Concrete 5 USA and Newway Forming. 6 A <b>And Newway Forming. Well, yeah, I think I have said</b> 7 <b>many things about that already.</b> 8 Q Okay. So what I would like to know right now is about 9 the first time Newway Forming and Baja Concrete USA 10 first interacted as companies. 11 A <b>I understood and I understand that happened in Canada.</b> 12 <b>Newway Forming Mr. Machado, Carlos and Roberto.</b> 13 Q Okay. How -- which individuals approached the other? 14 A <b>That, I don't know. We need to talk to Roberto, to</b> 15 <b>Newway Forming. I really don't know. I'm just</b> 16 <b>telling you what I understand how this happened at the</b> 17 <b>very beginning.</b> 18 Q Okay. When did Baja register in Washington as a 19 corporation? 20 A <b>When did Baja register in Washington?</b> 21 Q Yes. 22 A <b>Well, we need to take a look at the registration. I</b> 23 <b>don't remember it now.</b> 24 Q Okay. When was Baja first incorporated? 25 A <b>It was first incorporated in Florida and then</b></p>
Page 88	Page 89
<p>1 <b>registered in Washington after that. So I guess I</b> 2 <b>don't know. That's why I will need to see the</b> 3 <b>secretary of the state, the registration.</b> 4 Q When Baja first incorporated, had Baja already -- had 5 individuals from Baja already come into contact with 6 individuals from Newway? 7 A <b>When Baja was first incorporated, you mean in Florida?</b> 8 Q Yeah. 9 A <b>Well, I believe the organization was open because of</b> 10 <b>the agreement in Canada.</b> 11 Q So Baja was formed because of an agreement in Canada 12 involving Tony Machado, Roberto Soto condition, and 13 Carlos Penunuri? 14 A <b>Carlos and Newway Forming in Canada. I guess there is</b> 15 <b>a Newway Forming in Canada. They were all there.</b> 16 <b>It's coming from Canada. I mean, they were all new to</b> 17 <b>each other there, so that's the birth.</b> 18 Q Was the -- was this relationship an agreement between 19 Roberto and Newway and Baja -- was that -- and Carlos, 20 was that the impetus for Baja incorporating? 21 A <b>Was that the what?</b> 22 Q Was that the reason that Baja incorporated? 23 A <b>Well, they probably wanted to do that and something</b> 24 <b>else, as any business, yeah. Wanted to do that and</b> 25 <b>something else.</b></p>	<p>1 Q Was Baja incorporated in order to provide labor to 2 Newway? 3 A <b>Could you please repeat?</b> 4 Q Was the purpose of Baja's formation as a company so 5 that it could provide labor to Newway? 6 A <b>That was, like, the first contract for the company,</b> 7 <b>but I believe the company wanted to do other contracts</b> 8 <b>too.</b> 9 Q Okay. Did Baja register in Washington so that it 10 could work with Newway? 11 A <b>Yeah, correct because that was the only -- the only</b> 12 <b>project, the only agreement that was -- that existed</b> 13 <b>at that time. But also the registration would happen</b> 14 <b>because Baja wanted to have other projects from other</b> 15 <b>companies too.</b> 16 Q So does Baja do business with companies other than 17 Newway? 18 A <b>No, they never get to it.</b> 19 Q So Newway is the only company that Baja has ever done 20 business with is that what you're saying? 21 A <b>Yeah. I think they required a lot of labor. They</b> 22 <b>have many projects. I mean, they were big, but I</b> 23 <b>think there is -- well --</b> 24 MR. LARKIN: It's okay. You 25 answered the question.</p>

Page 90	Page 91
<p>1 THE WITNESS: Yeah.</p> <p>2 Q (By Ms. Franklin) I'm sorry. You were saying they</p> <p>3 were really big?</p> <p>4 A <b>Well, Newway Forming was providing a lot of projects.</b></p> <p>5 <b>They needed a lot of labor. Baja Concrete is not a</b></p> <p>6 <b>big company, you know.</b></p> <p>7 Q Okay. So Carl -- does Carlos have a relationship</p> <p>8 with -- a personal relationship with Antonio Machado?</p> <p>9 A <b>You mean Carlos --</b></p> <p>10 Q Penunuri.</p> <p>11 A <b>I believe they are friends or business related, at</b></p> <p>12 <b>least.</b></p> <p>13 Q Did Carlos have a personal relationship with anyone</p> <p>14 else at Newway?</p> <p>15 MR. LARKIN: Object to the form of</p> <p>16 the question.</p> <p>17 I think, again, Mercedes is not here to testify</p> <p>18 for --</p> <p>19 THE WITNESS: Newway.</p> <p>20 MR. LARKIN: -- Newway. Sorry.</p> <p>21 MS. FRANKLIN: Okay. I'm just</p> <p>22 trying to sort of understand the nature of the</p> <p>23 relationship between Baja and Newway.</p> <p>24 MR. LARKIN: Oh, okay.</p> <p>25 Q (By Ms. Franklin) Does anyone at -- let me rephrase</p>	<p>1 this: Did anyone at Baja have a personal relationship</p> <p>2 with anyone at Newway?</p> <p>3 A <b>Baja personal relationship with anyone at Newway? Not</b></p> <p>4 <b>that I know.</b></p> <p>5 Q Okay. Can you describe the current relationship</p> <p>6 between Baja and Newway, please.</p> <p>7 A <b>The current one? It's a legal matter now.</b></p> <p>8 Q I'm not asking you to describe any conversations</p> <p>9 between the companies in litigation, but just separate</p> <p>10 from that.</p> <p>11 A <b>I believe there is none.</b></p> <p>12 Q Are Baja personnel currently in contact with Newway</p> <p>13 personnel?</p> <p>14 A <b>I'm sorry. Is Baja what?</b></p> <p>15 Q Does anyone who currently works for Baja in contact</p> <p>16 with anyone who currently works for Newway, separate</p> <p>17 from this litigation?</p> <p>18 A <b>I don't know they are still there, but I know some of</b></p> <p>19 <b>the workers stopped working through Baja and they went</b></p> <p>20 <b>to work for Newway.</b></p> <p>21 Q Okay. What about people with supervisory experience</p> <p>22 or managers? Are any managers from Baja currently in</p> <p>23 contact with anyone at Newway?</p> <p>24 A <b>Not that I know.</b></p> <p>25 Q Did Newway ever send Baja workers to worksites other</p>
Page 92	Page 93
<p>1 than the 1120 Denny Way worksite?</p> <p>2 A <b>I mean, did Newway send -- I'm sorry. Could you</b></p> <p>3 <b>repeat the question?</b></p> <p>4 Q Did Newway ever send Baja workers to worksites other</p> <p>5 than 1120 Denny Way?</p> <p>6 A <b>Well, Roberto would know that better than me. But</b></p> <p>7 <b>through the invoices, I think there were several</b></p> <p>8 <b>sites.</b></p> <p>9 Q Okay. And did Baja workers work at several sites with</p> <p>10 Newway Forming?</p> <p>11 A <b>Who? Could you repeat again?</b></p> <p>12 Q Did Baja workers work at several different sites with</p> <p>13 Newway Forming?</p> <p>14 A <b>Did Baja workers -- you mean Baja -- that was on the</b></p> <p>15 <b>payroll.</b></p> <p>16 Q Yes, workers on Baja payroll, did they work at</p> <p>17 multiple worksites with Newway Forming?</p> <p>18 A <b>I think so. I think there was more than one site.</b></p> <p>19 <b>Not very many, but there were more than one.</b></p> <p>20 Q Just give me a moment.</p> <p>21 MS. FRANKLIN: Is this a good time</p> <p>22 to take a brief break, or maybe more of an extended</p> <p>23 break?</p> <p>24 MR. LARKIN: A lunch break? That</p> <p>25 would be great.</p>	<p>1 MS. FRANKLIN: We can go off the</p> <p>2 record for a moment.</p> <p>3 (Recess from 12:04 p.m. to</p> <p>4 12:51 p.m.)</p> <p>5 MS. FRANKLIN: Let's go back.</p> <p>6 I would like to pull up an exhibit we've already</p> <p>7 seen before. I'm afraid I forget the exhibit number,</p> <p>8 but it was Angel Gomez Chavez. I marked it as B.</p> <p>9 No. B, as in boy.</p> <p>10 EXHIBIT TECH: One second.</p> <p>11 MS. FRANKLIN: Sure. No worries.</p> <p>12 Yes. Thank you.</p> <p>13 I'm just trying to figure out the page we were</p> <p>14 looking at previously.</p> <p>15 Okay. Let's look at the page where -- it's the</p> <p>16 fifth page of the PDF. It's 0418, the Bates number on</p> <p>17 the bottom.</p> <p>18 MS. SYLVESTER: I believe the</p> <p>19 previous one was 16.</p> <p>20 MS. FRANKLIN: It's okay.</p> <p>21 Q (By Ms. Franklin) So, Ms. De Armas, I know before the</p> <p>22 break we were talking about how Baja starts with net</p> <p>23 pay and identifies a bonus based on that.</p> <p>24 What I'm trying to understand is whether Baja --</p> <p>25 how Baja complies with its obligations under Seattle</p>

Page 94	Page 95
<p>1 Labor of Standards and other labor law? 2 For example, does Baja go and calculate how many 3 hours the person was working and what their hourly pay 4 rate was? 5 <b>A No. Roberto was doing that.</b> 6 <b>Q Roberto was doing those calculations and figuring out</b> 7 <b>hourly pay rate?</b> 8 <b>A Yeah, Roberto will do that. And Roberto would just</b> 9 <b>report in a summary to payroll exactly what they</b> 10 <b>needed to get paid. And the only thing the system</b> 11 <b>will do is calculate the bonus. The peace work of</b> 12 <b>1,584, you know, is the gross to be able to come up</b> 13 <b>with 1,084. He would put the hours, he would put</b> 14 <b>that. And then the bonus would be calculated in the</b> 15 <b>system to make sure he would not pay for the taxes,</b> 16 <b>because that's the agreement with the employees, that</b> 17 <b>they would receive a net certain amount for working.</b> 18 <b>Q Did Baja ask Roberto to calculate the hourly pay in</b> 19 <b>situations where workers were being paid on a rate</b> 20 <b>other than -- on a basis other than an hourly basis?</b> 21 <b>A Roberto didn't -- Baja didn't ask anything to Roberto.</b> 22 <b>Roberto was doing that for his agreement with</b> 23 <b>employees because he was hiring the workers.</b> 24 <b>Q Did Baja agree with employees, that he would ensure</b> 25 <b>that their payments complied with labor law?</b></p>	<p>1 <b>A Oh, yeah. Payroll, everything that he reported, we</b> 2 <b>make sure everything will comply with the laws, with</b> 3 <b>everything.</b> 4 <b>Q So is payroll calculating what the hourly pay was for</b> 5 <b>each employee?</b> 6 <b>A You see it says peace work. So he -- this employee</b> 7 <b>has the hours that he reported, but it has the amount</b> 8 <b>that employee wanted to get paid. It's like a</b> 9 <b>contract. I am going to get paid \$3,000 for this,</b> 10 <b>net. Okay. Then he wanted to have that. So if there</b> 11 <b>was any extra to cover, Roberto wanted to cover</b> 12 <b>everything, then the bonus will pick up and so the</b> 13 <b>employee will get paid more. You know, that bonus is</b> 14 <b>extra. He didn't earn that. But it's there to give</b> 15 <b>him the net pay. So the company was calculating that</b> 16 <b>way. That's what Roberto was doing.</b> 17 <b>Q So setting aside the bonus, was this employee Angel</b> 18 <b>Gomez Chavez, was he paid a peace rate or an hourly</b> 19 <b>rate?</b> 20 <b>A No. It was a peace work. And he -- Roberto would</b> 21 <b>provide the hours that he worked, which, as I said</b> 22 <b>before, is in another report, because all of them has</b> 23 <b>to have hours because we needed to report to L&amp;I. So</b> 24 <b>everything is reported to L&amp;I in the hours he</b> 25 <b>reported.</b></p>
<p>1 <b>And so -- but he work as a peace work. So we</b> 2 <b>will -- you know, the hours -- Roberto will say too.</b> 3 <b>So it was all a combination. Okay, this is what</b> 4 <b>you're getting and this is the net and that's it.</b> 5 <b>Q So there was some kind of calculation that was done to</b> 6 <b>determine how much an employee was owed; correct?</b> 7 <b>A Yeah. And that was done between Roberto and the</b> 8 <b>worker. That was the agreement with them.</b> 9 <b>Q Did Baja -- how does Baja know that in every case</b> 10 <b>Roberto made an agreement with the worker?</b> 11 <b>A Well, Baja knows. Baja -- Roberto was the one</b> 12 <b>reporting. Roberto was the one hiring. Roberto was</b> 13 <b>the one disciplining, firing. He was on his own. And</b> 14 <b>this is the agreement, and he was doing all of that.</b> 15 <b>Remember, he comes an agreement with Canada. So</b> 16 <b>he will hire. He will do every single thing. The</b> 17 <b>only intervention from us would be that he reported a</b> 18 <b>summary. He gave it to payroll in Baja, and then Baja</b> 19 <b>will do the payroll and will pay everything that is</b> 20 <b>needed.</b> 21 <b>Q Whose responsibility was it to ensure that workers</b> 22 <b>were paid in accordance with the law?</b> 23 <b>A Roberto. Roberto needed to make sure, and Roberto</b> 24 <b>knew we -- not we. I myself explained to Roberto all</b> 25 <b>the things that he needed to pay to the government.</b></p>	<p>1 <b>So he was making sure that everything was done.</b> 2 <b>That's why they hired payroll Mercedes Accounting</b> 3 <b>because they wanted to pay every single thing. And</b> 4 <b>Roberto will report because we have no contact with</b> 5 <b>workers and no contact with sites, anything like that.</b> 6 <b>He would need to report everything. So he was</b> 7 <b>reporting everything.</b> 8 <b>So all of the payroll that you will see is based</b> 9 <b>on whatever Roberto reported.</b> 10 <b>Q But --</b> 11 <b>A Like any payroll company.</b> 12 <b>Q When Mercedes Accounting instructed Roberto on how to</b> 13 <b>do the calculation, were those instructions verbal or</b> 14 <b>in writing?</b> 15 <b>A What do you mean? What calculation?</b> 16 <b>No, we didn't instruct Roberto to do any</b> 17 <b>calculations. He would make the calculations. He</b> 18 <b>will report to us what we needed to pay and the hours</b> 19 <b>and everything.</b> 20 <b>Q Okay. So I'm going to shift gears again back to Topic</b> 21 <b>No. 6.</b> 22 <b>During the relevant time period, again, that's</b> 23 <b>February 2018 to August 2020, did money ever flow from</b> 24 <b>Baja to Newway?</b> 25 <b>A You mean Baja paying Newway?</b></p>

Page 106	Page 107
<p>1 Contreras, including any formal relationship 2 memorialized in writing, what Baja asked Mr. Soto to 3 do, what requests Baja made of Mr. Soto with respect 4 to the hiring, firing, and payment of workers. The 5 origins of the relationship between Mr. Baja -- 6 between Baja and Mr. Soto and the current status of 7 the relationship." 8 MS. FRANKLIN: So if we could, I 9 would like to move to -- I believe we're on Exhibit 8 10 and this is -- I marked it as G in my files. 11 (Exhibit No. 8 marked for 12 identification.) 13 Q (By Ms. Franklin) Ms. De Armas, are you familiar with 14 this document? 15 A Well, I'll tell you, the first time I saw this 16 document was when Alex -- 17 MR. LARKIN: It was when -- 18 THE WITNESS: -- show it to me. 19 MR. LARKIN: Like, a month ago or 20 so. Maybe a couple months ago. Somebody produced it 21 in discovery, yeah, in this case. 22 Sorry. I'm not supposed to answer the question. 23 THE WITNESS: This is the first 24 time -- yeah. 25 Q (By Ms. Franklin) And is this a business card?</p>	<p>1 A Well, they put Baja Concrete but they have the address 2 in Florida. The email belongs to Roberto Soto, and 3 the information is Roberto Soto and Carlos. So it has 4 nothing to do with really Baja Concrete USA. They 5 probably did it. I have no idea. We need to ask 6 Roberto and Carlos. 7 Q Did Baja have any knowledge of this -- the printing of 8 this business card? 9 A As far as I know, no. This is the first time I see 10 it, a month ago. 11 Q During the relevant time period, did Baja pay 12 Mr. Soto -- Roberto for his work on its behalf? 13 A No. Baja Concrete USA was paying Baja Concrete Ltd. 14 in Canada. But there were some times that Roberto was 15 given an advance, which we will account to the Baja 16 Concrete Ltd. Canada. 17 So, you know, when we receive the invoices from 18 Baja Concrete Ltd. Canada, well, that was the account 19 for that. So that was the procedure. Baja Concrete 20 Ltd. Canada would bill Baja Concrete USA Corp. in USA 21 for all of the work Roberto was doing here. 22 Q So if I understand correctly, just -- Roberto was 23 being paid by Baja Concrete Ltd. and Baja Concrete USA 24 Corp. was reimbursing Baja Concrete Ltd. for that 25 expense; is that correct?</p>
Page 108	Page 109
<p>1 A No. Baja Concrete Ltd. was billing for Roberto's work 2 because he live in Canada, he stayed there. He 3 goes -- he was going often to Canada, back to Canada, 4 back and forth, and he was paid by them. 5 Now, Baja Concrete USA, there were times that 6 Roberto needed some money right away, right, and so 7 Claudia will give him an advance that later was 8 deducted from the invoices that Ltd. was billing. 9 Q So Ltd. -- Baja Concrete Ltd. billed Baja Concrete USA 10 Corp. for the payments that Ltd. paid to Roberto; is 11 that correct? 12 A Well, Baja Concrete Ltd. was billing all the time for 13 Roberto. I think -- I'm not quite sure, but I think 14 Roberto is a partner with Baja Concrete Ltd. But they 15 were just billing Baja Concrete USA here. 16 So the money would go to Canada, wire, whatever. 17 And I was just telling you that sometimes Roberto 18 needed money and Claudia would give some advances that 19 were taken care of later when -- you know, need to be 20 deducted from the invoices. That's all. 21 Q And how did Baja Concrete Ltd. -- how much did Baja 22 Concrete Ltd. pay to Roberto for his services? 23 A I have no idea. That's between Baja Concrete Ltd. ... 24 Q Okay. How much did Baja Concrete Ltd. bill Baja 25 Concrete USA for Roberto?</p>	<p>1 A Well, I don't have any amount on the top of my mind, 2 but there was a monthly invoice and it would vary. 3 Sometimes 3,000; sometimes 5,000. Sometimes -- you 4 know ... 5 Q What would it vary -- based on? 6 A There's not very many. It was not a big deal because 7 Baja Concrete didn't have enough money to really pay 8 for that. I mean -- 9 Q I just want -- 10 A -- remember -- we need to be clear on this. Roberto 11 works for Baja Concrete Ltd. Canada. Roberto is 12 traveling, and he belongs to Canada, not to USA. And 13 that's the reason he came on his own, hired by the 14 Ltd. and he was doing all of this work with the 15 workers. That's why he was totally independent. 16 That's how I saw. That's what it is. 17 Q But Roberto is providing a service to Baja Concrete 18 USA Corp.; is that correct? 19 A I think it's independent because he belongs to Baja 20 Concrete Ltd. But he was supposed to hire the labor 21 and doing all of that, and Baja Concrete was 22 processing all of the payroll. And he was telling 23 Baja Concrete payroll everything. You do this, you do 24 that. This is the summary. He deals with all of the 25 employees and all of the issues. All kind of issue,</p>

Page 110	Page 111
<p>1 <b>he would resolve them all. Baja Concrete will have</b></p> <p>2 <b>nothing to do with that.</b></p> <p>3 Q Was Baja Concrete USA Corp. benefiting from Roberto's</p> <p>4 work?</p> <p>5 A <b>No. Baja Concrete USA pay Baja Concrete Ltd.</b></p> <p>6 <b>Now, you need to separate. Roberto works for the</b></p> <p>7 <b>Canadian company, and Roberto there is assigning his</b></p> <p>8 <b>agreement, his partnership, whatever it is, which I</b></p> <p>9 <b>don't know, he was hired to -- to hire the workers,</b></p> <p>10 <b>you know, to deal with everything like that. That's</b></p> <p>11 <b>why he was completely independent because he will do</b></p> <p>12 <b>that -- everything. That was coming from Baja</b></p> <p>13 <b>Concrete Ltd. So ...</b></p> <p>14 Q But the workers that he was performing these tasks for</p> <p>15 were on Baja Concrete USA Corp.'s payroll; correct?</p> <p>16 A <b>The workers that he hired and did the whole thing,</b></p> <p>17 <b>they were all processed by Baja Concrete USA payroll,</b></p> <p>18 <b>yeah. He will report a summary of everything.</b></p> <p>19 Q Okay.</p> <p>20 A <b>And I mean everything.</b></p> <p>21 Q I want to go back to a question I'm not really sure</p> <p>22 you answered before.</p> <p>23 You said that the amount that Baja Concrete Ltd.</p> <p>24 billed Baja Concrete USA Corp. for Roberto, you said</p> <p>25 that amount varies. So I want to understand why it</p>	<p>1 varied.</p> <p>2 What was the basis for that number going up or</p> <p>3 down?</p> <p>4 A <b>Well, that's an agreement between the Ltd. and</b></p> <p>5 <b>Roberto. I really don't know because those are</b></p> <p>6 <b>invoices from Canada, and that was it.</b></p> <p>7 Q Was he paid a different amount based on what workers</p> <p>8 were paid?</p> <p>9 A <b>I don't think so.</b></p> <p>10 Q How do you know?</p> <p>11 A <b>I really don't know, but I don't think so.</b></p> <p>12 Q When Baja Concrete USA Corp. paid Baja Concrete Ltd.</p> <p>13 for Roberto, did Baja Concrete USA Corp. do anything</p> <p>14 to verify that the amount was correct?</p> <p>15 A <b>I'm sorry. Could you repeat the question?</b></p> <p>16 Q So you've said that Baja Concrete Ltd. would send an</p> <p>17 invoice to Baja Concrete USA Corp. for Roberto's</p> <p>18 costs.</p> <p>19 Would -- when that happened, would Baja Concrete</p> <p>20 USA Corp. do anything to verify that the costs were</p> <p>21 correct?</p> <p>22 A <b>Well, Claudia would talk to them. So I guess all of</b></p> <p>23 <b>those were okay and approved by Claudia. And that was</b></p> <p>24 <b>done that way.</b></p> <p>25 Q Would Claudia know the basis for Roberto's pay?</p>
<p>Page 112</p> <p>1 A <b>I don't think so because that's Canada, right. I</b></p> <p>2 <b>think the directions came from Canada. Roberto was a</b></p> <p>3 <b>partner or whatever, and he was hiring and doing all</b></p> <p>4 <b>of this. And so all the payroll would be processed</b></p> <p>5 <b>and they will get paid. Roberto will get paid by the</b></p> <p>6 <b>Canadian company.</b></p> <p>7 Q Okay.</p> <p>8 A <b>It was coming from there. Whatever they were doing</b></p> <p>9 <b>it, I don't know. I really don't know anything about</b></p> <p>10 <b>the Canadian company. I just know that there are</b></p> <p>11 <b>invoices for the services, whatever he was providing,</b></p> <p>12 <b>and they were paid. They were all paid.</b></p> <p>13 Q Did Baja and Mr. Soto have a formal -- Baja Concrete</p> <p>14 USA Corp. and Mr. Soto have a formal relationship</p> <p>15 memorialized in writing?</p> <p>16 A <b>What do you mean, "formal relationship"?</b></p> <p>17 Q Did they have any sort of written agreements?</p> <p>18 A <b>Oh, I don't know. I just can tell about the invoices.</b></p> <p>19 <b>But if there was a written agreement, I don't know.</b></p> <p>20 Q Okay. And I'm talking about Baja Concrete USA Corp.</p> <p>21 and Roberto.</p> <p>22 A <b>You mean Baja Concrete with Roberto?</b></p> <p>23 Q Yeah.</p> <p>24 A <b>Oh, there is no -- because Roberto belongs to Canada.</b></p> <p>25 <b>There would be a document between Canadian company and</b></p>	<p>Page 113</p> <p>1 <b>Baja Concrete USA.</b></p> <p>2 Q Okay. Did --</p> <p>3 MS. FRANKLIN: Thank you for</p> <p>4 removing the document. I'm sorry about that.</p> <p>5 Q (By Ms. Franklin) Did Baja ever list Mr. Soto's</p> <p>6 address as its business address?</p> <p>7 A <b>Baja Concrete USA listed Roberto Soto's address?</b></p> <p>8 Q As his own address.</p> <p>9 A <b>No.</b></p> <p>10 Q Would Baja ever consider Mr. Roberts' address as its</p> <p>11 address?</p> <p>12 A <b>You mean that Baja would consider to have Roberto</b></p> <p>13 <b>Soto's address?</b></p> <p>14 Q Yeah, that's my question.</p> <p>15 A <b>In a business card?</b></p> <p>16 Q Or just in general. Would that ever be considered --</p> <p>17 A <b>That would never happen.</b></p> <p>18 Q Okay. Did Baja Concrete USA Corp. ask Mr. Soto to do</p> <p>19 anything with respect to the workers who were listed</p> <p>20 on Attachment B in that Excel?</p> <p>21 A <b>Baja Concrete will ask Roberto Soto to do anything</b></p> <p>22 <b>with Exhibit B?</b></p> <p>23 Q With the workers who were listed in that exhibit.</p> <p>24 A <b>With the workers -- you mean Baja Concrete will ask</b></p> <p>25 <b>Roberto Soto to do something?</b></p>

Page 122	Page 123
<p>1 A I'm sorry. Could you repeat? 2 Q What oversight did Baja provide? 3 A What do you mean by "oversight"? 4 Q Did Baja do anything to ensure that Mercedes 5 Accounting was doing things correctly? 6 A Like, what things correctly? 7 Q Processing payroll. 8 A Well, it would match all Roberto's summary of payroll. 9 They were done exactly as Roberto requested. Roberto 10 will give the summary, and that is the backup for the 11 payroll. Roberto would provide all of the information 12 for the workers. And, of course, we will have a copy 13 of that, not originals. 14 So they would provide all of the copies that was 15 needed, all the documents for the direct deposits, it 16 would provide everything. And everything -- and 17 Roberto and Claudia, I'm sure they check all of that. 18 And it was never a complaint. 19 Q Did Mercedes Accounting work for -- perform services 20 for Baja or for Roberto? 21 A No, not for Roberto. For Baja Concrete. 22 Q How did -- in processing payroll, how did Mercedes 23 Accounting determine how much to pay workers? 24 A How much Mercedes Accounting determined -- what? 25 Q In processing payroll for Baja, how did Mercedes</p>	<p>1 Accounting figure out how much it needed to pay the 2 workers? 3 A We don't figure it out. In the Excel or whatever 4 document or summary Roberto will give us, he will have 5 all of the hours. He will have every detail there. 6 And all it is in payroll is grabbing all of that 7 information and just running payroll for each 8 employee, according to that information. 9 So we don't need to figure out anything. We just 10 run it through the system -- through the software, and 11 then we'll get the paychecks. And then from there 12 will pay all of the liability -- the payroll 13 liabilities and everything. 14 So we don't need to check anything. I don't 15 clear understand. It's just a very straight deal. 16 You give me the hours, I have the information for the 17 employees. They are -- every two weeks -- before 18 every two weeks, they will give us the summary and 19 payroll was done, was processed. 20 Q Ms. De Armas, maybe you can help me understand. 21 You said -- earlier in your deposition you 22 described a very different process for figuring out 23 how much to pay workers where it's not just based on 24 hours, but there's a peace rate and there are bonuses 25 and there's a private agreement between the worker and</p>
<p>Page 124</p> <p>1 Roberto. 2 How did -- if that was, in fact, how workers were 3 paid, how did Mercedes Accounting figure all of that 4 out? 5 A We didn't figure it out. Roberto was in charge of the 6 workers. So that's an agreement between Roberto and 7 the workers. And you can pay a peace work. You can 8 do that. That's allowed. So -- and that's allowed by 9 the hour. 10 So it was just giving us the information. 11 Roberto would figure it out and give it to us. We 12 don't have to figure anything -- anything out. 13 It's like any payroll company. You tell ADP 14 to -- 15 MR. LARKIN: Just answer the 16 question. 17 THE WITNESS: Okay. So it's just 18 straightforward. You give me the hours, I process 19 payroll, and I give you the pay stub, and I pay all of 20 payroll liabilities. That's it. I don't have to 21 figure out anything. I'm not in charge. Roberto is 22 in charge. 23 Q (By Ms. Franklin) But Mercedes Accounting does not 24 work for Roberto. 25 Mercedes Accounting was purchasing a service for</p>	<p>Page 125</p> <p>1 Baja? 2 A Yeah. 3 Q You've already testified to that? 4 A Yeah. 5 Q So did -- is it your testimony that Baja told -- that 6 Roberto told Baja how much the workers should be paid 7 and Baja communicated that to Mercedes Accounting? 8 A I do believe -- again, I do believe, no. I know for a 9 fact, Roberto Contreras was doing all of the rates, 10 hiring everybody, handling the whole thing himself, 11 firing, getting new employees, controlling everything. 12 He was doing all of that. And he was hired by a 13 Canadian company. Okay. 14 So that's an agreement between Baja Concrete USA, 15 a Canadian company. And, of course, Roberto knew that 16 to process payroll, he needed to give a summary to us. 17 And he would probably copy Claudia on that summary. 18 So if you check the summary against the payroll, 19 it is exactly the same. 20 Q Okay. But my question is a little different. Let me 21 try to ask it a different way. 22 Mercedes Accounting had to add on a bonus of a 23 certain amount in some cases to get to the net amount; 24 correct? 25 A No, not Mercedes Accounting. Roberto needed a check</p>

Page 126	Page 127
<p>1 for \$3,000, okay. So you run that through the system 2 and pay with the system because they need to get a net 3 check. 4 So Roberto knew I have to pay them extra because 5 I have to pay for the taxes. And if there is extra 6 money, I don't care. We just need to give them the 7 net. Whatever we need to give them, \$3,000 net, 8 that's a peace work, what I call, and I give you the 9 hours because we need to report to L&amp;I, so we would 10 process that. 11 And so it is coming from Roberto. I'm not 12 figuring anything out. He made an agreement with the 13 workers that he will pay in net. The worker says, "I 14 will work for you if part of the hours you give me a 15 net check. I don't want to pay any taxes. I don't 16 want to pay anything." And I understand that's a 17 legal thing to do. As long as you keep track of the 18 hours and everything, they are okay. So they were 19 paid that. 20 Q Did Baja Concrete USA give Mercedes Accounting 21 authority to compute the payroll that way? 22 A No. We were not computing payroll that way. Roberto 23 and Claudia talk about it, right. Roberto and 24 Claudia. And they will give us the information. And 25 with that information, we will process payroll, right.</p>	<p>1 So if your question is, who is figuring out the 2 bonus, that is Roberto and that is Claudia, right? 3 We're just processing the payroll. 4 Q But Claudia gave Mercedes Accounting the information 5 that Mercedes Accounting needed to process the 6 payroll; is that correct? 7 A Yeah, and Roberto. Roberto is the one in charge. If 8 there is anybody that needed to approve for Baja 9 Concrete, that would be Claudia. If there is anything 10 there, right, because they have an agreement. Okay, 11 there is an agreement between Claudia, Baja Concrete 12 USA, and the Canadian company. So Roberto is 13 representing that Canadian company and the agreement 14 that they have. 15 So Roberto will give us everything, and 16 everything that is in the payroll, to the penny, 17 represents what Roberto gave us in the summary, 18 whatever it was needed. 19 So there are different ways to figure this out. 20 MR. LARKIN: You don't need to do 21 that right now. 22 THE WITNESS: Yeah, I don't need to. 23 MS. FRANKLIN: Just one moment. I'm 24 just going to check my notes one more time to make 25 sure that I'm done here.</p>
Page 128	Page 129
<p>1 Okay. I have no further questions. Thank you 2 for your time today. 3 THE WITNESS: Thank you. 4 MS. FRANKLIN: Do other counsel have 5 questions for Baja? 6 MS. WOLFE: Yes. Nicole Wolfe, 7 counsel for Newway. I'll have a couple questions. 8 MS. KINCAID: Nicole, you can go 9 ahead. I'll have some questions as well. 10 MS. WOLFE: Sure. 11 EXAMINATION 12 BY MS. WOLFE: 13 Q Good afternoon. My name is Nicole Wolfe. I'm counsel 14 for Newway. 15 What type of business entity is Baja Concrete 16 USA? 17 A I'm sorry. What type of business ID? 18 MR. LARKIN: Entity. 19 Q (By Ms. Wolfe) Entity. 20 A It's a C corporation. 21 Q And who are the officers? 22 A Claudia Penunuri. 23 Q Is anyone else an officer of Baja Concrete USA? 24 A No. 25</p>	<p>1 Q Does anyone else have any ownership interest of Baja 2 Concrete USA? 3 A Not that I know. It's just Claudia. 4 Q Are Carlos and Claudia related? 5 A Yes. 6 Q How so? 7 A Brother and sister. 8 Q Does Baja Concrete USA have a website? 9 A No. 10 Q Does Baja Ltd., the Canadian company, have a website, 11 that you know of? 12 A I don't know. 13 Q Does Baja know where Roberto Soto Contreras is 14 currently? 15 A I'm sorry. You are asking if Baja Concrete knows 16 where Roberto Contreras is right now? 17 Q Yes. 18 A Yeah. No, I don't think so. 19 Q When was the last time that Baja Concrete USA was in 20 contact with Roberto? 21 A Well, I don't know when Claudia was the last time, but 22 for me directly as Mercedes Accounting -- I mean, last 23 contact with the company -- with Baja Concrete, you 24 say? I really don't know. 25 Q Do you know if Claudia is still in contact with</p>

Page 142	Page 143
<p>1 are covering part of it. 2 THE WITNESS: Yeah. 3 Q (By Ms. Kincaid) Can you see that better now? 4 A <b>Yeah. The provider names and last-known address of</b> 5 <b>all supervisors and managers.</b> 6 Q Okay. Perfect. 7 So you can read that? 8 A <b>Yes, I can read it.</b> 9 Q Wonderful. 10 And then I'm going to scroll down to the very 11 end, just to show you the Bates number that's at the 12 very bottom. 13 So the end of this is APPBAJA0162 at the bottom 14 right. 15 Do you see that as well? 16 A <b>Yeah.</b> 17 Q Okay. I'm going back to the beginning of this 18 document, and it states, "Initial Request for 19 Information" at the top. 20 Do you see that? 21 A <b>"Initial Request for Information," yeah, I see that.</b> 22 Q And do you -- have you seen this document before? 23 A <b>Well, I need to see all of it to see if I've seen it</b> 24 <b>before.</b> 25 Q Sure. Let me scroll down for you.</p>	<p>1 A <b>That's probably the questionnaire that they send in</b> 2 <b>the very beginning, yep.</b> 3 Q And, Ms. De Armas, does this appear to be your 4 handwriting? 5 A <b>That is my handwriting, yep.</b> 6 Q Okay. Wonderful. 7 So I would like to ask you a couple of questions 8 about this document. 9 So in this document, did you respond with 10 information pertaining to Baja Concrete USA? 11 A <b>Well, if they request it for Baja Concrete USA, I did</b> 12 <b>the best I knew how.</b> 13 Q So I would like to go to this first question here, 14 Question No. 1. And it says, "Provide a current 15 organizational chart showing names and titles of all 16 employees who work in Seattle." 17 Do you see that? 18 A <b>Yep.</b> 19 Q And in response to that, did you provide a list of all 20 of those names of employees who work in Seattle for 21 Baja USA? 22 A <b>I guess so because it says "included" and "attach."</b> 23 Q And would the names that you had provided been the 24 same as the names of those employees in that Baja USA 25 employee detail sheet that we looked at just a moment</p>
Page 144	Page 145
<p>1 ago? 2 A <b>Probably because all I have is the payroll. So all of</b> 3 <b>this is coming from payroll.</b> 4 Q And then going down to Question No. 2, it says, 5 "Provide names, titles, and addresses of your 6 corporate office, corporate officers, and owners and 7 percentages of ownership for each location." 8 Can you tell me what your answer was to this 9 question? 10 A <b>It's Claudia Penunuri, president, a hundred percent.</b> 11 <b>Yes, and she is.</b> 12 Q And he is the president of Baja USA? 13 A <b>Yes.</b> 14 Q And going down to Question 3, it says, "Describe the 15 process by which you publicized job openings, solicit 16 job applicants, and hire new employees. Include the 17 names and titles of individuals with authority to make 18 decisions in this process." 19 Do you see that question? 20 A <b>Yes.</b> 21 Q And are you able to read me your response to that 22 question? 23 A <b>It says, "Applicants go to the jobsite to request</b> 24 <b>employment." Some of them do. "Roberto Soto,</b> 25 <b>independent contractor select candidates and make</b></p>	<p>1 <b>decisions with president of company."</b> 2 Q And in reference to "president of company," who were 3 you referring to there? 4 A <b>Claudia.</b> 5 Q And so you said, "select candidates and makes 6 decisions with president of company," what did you 7 mean by that? 8 A <b>Well, Roberto would do the whole thing and he will let</b> 9 <b>Claudia know everybody that -- Claudia will never</b> 10 <b>complain -- will never say anything.</b> 11 Q Well, I'm not asking if Claudia complained. 12 I'm simply asking what kind of decisions did he 13 make with Claudia? 14 A <b>He was letting Claudia know of what he was doing and</b> 15 <b>pending. It was a communication with Claudia.</b> 16 Q And so he -- 17 A <b>With --</b> 18 Q I'm sorry. 19 A <b>(Inaudible.)</b> 20 Q I didn't catch that last thing you said. Could you 21 repeat that? 22 A <b>I said Claudia and Carlos. But remember, this is a</b> 23 <b>document for USA. So I'm focusing on USA, yeah. He</b> 24 <b>would let Claudia know the situation and the hiring he</b> 25 <b>was doing and everything.</b></p>



Page 146	Page 147
<p>1 Q And so was Claudia in essence approving the decisions 2 that he was making? 3 A <b>No, she was not approving anything. He was letting 4 her know.</b> 5 Q So I guess I'm trying to understand what you mean by 6 "makes decisions with president of the company." 7 A <b>I'm going to tell you this: Claudia is a person that 8 relies on him for the decision because Roberto is 9 experienced in what he was doing. He was hired for 10 that, right. He was hired for that, and so he's 11 making the decision. But, of course, he needs to let 12 the president of the company know what he's doing.</b> 13 A Canadian company Ltd. and who is paying Baja 14 Concrete USA. He needs to run it through her. That's 15 what I meant there. He needs to run it through her. 16 Q Understood. 17 A <b>Claudia will never make decisions of, I hire this one, 18 I don't hire this one, you going to pay this one. 19 Claudia was doing nothing like that. Absolutely 20 nothing. Roberto was --</b> 21 Q Was Roberto -- was Roberto letting her know this 22 information in advance? 23 A <b>I don't think so. Roberto could do what he needed to 24 do for the labor to be Newway Forming, you know, but 25 he would talk to her, inform her. That's what I</b></p>	<p>1 <b>meant.</b> 2 Q He would inform her after the fact? 3 A <b>He can inform -- yeah, any time.</b> 4 Q Any time what? 5 A <b>Okay. Roberto -- one more time. Roberto makes all of 6 the decisions. He hired everything. He was not 7 calling Claudia to say, hey, I found a guy and I'm 8 going to pay \$30 to this guy because he has 9 experience.</b> 10 <b>No, he was not doing that. Roberto was doing the 11 whole contract. Roberto was hiring the people. He 12 will need to let Claudia know that he hired five, six, 13 ten new people, and they will go to the site of this 14 for Newway Forming and that the labor was there. 15 Perfect. That is the decision.</b> 16 Q Okay. And I'll come back to that because I think I 17 have a question later that is going to loop back 18 around, but I'll move on for a minute. 19 I want to go back down to Question 7. 20 And so this question says, "Do Baja Concrete, 21 Roberto Contreras, Claudia Penunuri and/or Carlos 22 Penunuri Ibarra share employees or supervisory 23 authority over employees with any other entity or 24 individuals at the 1120 Denny Way construction site?" 25 Do you see that question?</p>
<p>Page 148</p> <p>1 A <b>I'm going to read it.</b> 2 <b>"Do Baja Concrete, Roberto Contreras, Claudia 3 Penunuri and/or Carlos Penunuri share employees or 4 supervisory authority over employees with any other 5 entity or individuals at the 1120 Denny Way Seattle at 6 the construction site or any other building?"</b> 7 <b>Well, I'm going to tell you right now --</b> 8 Q Did you see the question? 9 A <b>Well, the question is if they share -- did they share 10 supervisory thing -- authority. So I think the answer 11 is no.</b> 12 Q And that is what you checked; correct? 13 A <b>Yeah. They are independent, each one of them. Carlos 14 Penunuri -- share employees -- what do you mean, share 15 employees? They are not sharing employees. So the 16 answer is no.</b> 17 Q Ms. De Armas, I don't mean to cut you off. You 18 answered my question, so I can move on to my next one. 19 And it looks like you also crossed out "Roberto 20 Contreras and Carlos Penunuri Ibarra from this 21 question; is that correct? 22 A <b>Yeah, because I thought you guys were -- the question 23 was about Baja Concrete, and Roberto Contreras doesn't 24 belong to Baja Concrete, and Carlos Penunuri doesn't 25 belong to Baja Concrete. So I crossed them out.</b></p>	<p>Page 149</p> <p>1 Q Okay. Understood. 2 And in terms of the employees that it was asking 3 about in this question, would that be -- or did you 4 understand that to be referencing the same employees 5 that Question 1 was asking about of Baja Concrete USA? 6 A <b>What is the question? Number 1?</b> 7 Q So question No. 1 asked for -- I'll scroll back up for 8 you. 9 Names and titles of all employees who work in 10 Seattle that we talked about you providing for Baja 11 Concrete USA. 12 And so did you understand Question No. 7 to be 13 referencing those same employees that were discussed 14 in Question 1? 15 A <b>Well, I would need to read -- well, what is Question 16 No. 1.</b> 17 Q I can rephrase to make this question easier. 18 Did you understand any employees, as it's asked 19 in Question No. 7, as referencing Baja Concrete USA's 20 employees? 21 A <b>Well, yeah. What I gave in No. 1 was the payroll. 22 The employees in the payroll for Baja Concrete. The 23 payroll processing, Baja Concrete was doing it; right? 24 So they were not sharing anything.</b> 25 Q Okay. And then I would like to go down to another</p>

Page 154	Page 155
<p>1 A <b>Roberto Contreras was working for the Canadian</b> 2 <b>company, and the Canadian company was billing Baja</b> 3 <b>Concrete USA for Roberto's services, for the services</b> 4 <b>they were providing.</b> 5 So in other words, Roberto Contreras belongs to 6 the Canadian company whatever they have there, I don't 7 know. But he comes with the Canadian company. And 8 the recent agreement with Baja Concrete USA and they 9 bill Baja Concrete USA for the services Roberto was 10 doing here in the USA. 11 Q And so, Ms. De Armas, you're not really answering my 12 question, though, because what I'm asking is if Baja 13 USA wasn't getting a benefit out of paying for 14 Roberto's services, then why did Baja USA do so? 15 A <b>Why are you saying that Baja Concrete USA are not</b> 16 <b>getting a benefit from Roberto?</b> 17 Q That is what you testified to earlier; correct? 18 A <b>I have not testified to any of that.</b> 19 MR. LARKIN: I don't think that was 20 her testimony. 21 Q (By Ms. Kincaid) Okay. Well, that's what I heard. 22 Are you saying that that is not correct? 23 A <b>I don't think -- I never said it. I never said there</b> 24 <b>is no benefit.</b> 25 Q Then let me reask the question.</p>	<p>1 Were the services that Roberto Contreras was 2 providing, were they for Baja USA's benefit? 3 A <b>Yeah. Well, that's an agreement between -- it needs</b> 4 <b>to be very clear: Roberto belongs to the Canadian</b> 5 <b>company, Ltd. The Canadian company and Claudia here</b> 6 <b>in Baja Concrete USA had an agreement.</b> 7 They sent Roberto from Canada to hire the people. 8 The Canadian company hire the people and do all of the 9 work here. They hire, they fire, they located, they 10 do whatever, okay. And, of course -- of course, the 11 Canadian company bill -- invoice Baja Concrete USA for 12 all the time because they will pay Roberto Contreras 13 in Canada. 14 Q Ms. De Armas, that's still not my question. 15 My question is -- and it sounds like you were 16 starting to answer but maybe you were taking back your 17 answer, so I just want to clarify. 18 Were the services that Roberto Contreras was 19 providing to -- under this agreement for Baja USA's 20 benefit? 21 A <b>Of course, Baja USA.</b> 22 Q Okay. 23 A <b>But it wasn't Roberto Contreras directly. It was the</b> 24 <b>company. He's representing a company.</b> 25 Q Understood.</p>
Page 156	Page 157
<p>1 A <b>Yeah. Okay.</b> 2 Q And when you said earlier that Roberto had his own 3 company, did you mean Baja Canada, so Baja Ltd.? 4 A <b>I didn't say Roberto has his own company. I said</b> 5 <b>Roberto works or probably a partner, and I don't know</b> 6 <b>for sure, for the Baja Concrete Ltd. in Canada.</b> 7 Q Yes. That's understood, Ms. De Armas. 8 A <b>Yes.</b> 9 Q So I would like to ask you now about another exhibit, 10 and I'm pulling that up on my screen here. 11 Do you see this document? It says "Invoice 12 No. 055"? 13 A <b>Yep.</b> 14 Q And down at the bottom it says SEATTLE-OLS-0256? 15 A <b>Uh-huh.</b> 16 Q Have you seen this document before? 17 A <b>Yep.</b> 18 Q And what is this document? 19 A <b>It's just a copy of one of the invoices of Baja</b> 20 <b>Concrete Ltd. from Canada will give to Baja Concrete</b> 21 <b>USA here in USA.</b> 22 Q And was this one of the charges for Roberto Contreras' 23 services? 24 A <b>Yep, this is one of the charges.</b> 25 Q And you said there were monthly invoices.</p>	<p>1 So there should be more than one of these 2 invoices; correct? 3 A <b>Yeah, there should be more than one. That was just a</b> 4 <b>sample the City of Seattle requested, and I gave them</b> 5 <b>this sample.</b> 6 Q Okay. So Baja USA has more of these invoices in its 7 possession? 8 A <b>Yes.</b> 9 Q And, Ms. De Armas, what period of time did 10 Mr. Contreras provide services to Baja USA? 11 A <b>Well, I think he was here in USA from the very</b> 12 <b>beginning until -- until he went back to Canada, and I</b> 13 <b>didn't see him anymore. I don't recall when was that.</b> 14 <b>Maybe a year ago. Maybe -- you know.</b> 15 Q Is that a year ago when you're saying he left for 16 Canada? 17 A <b>I don't know when. I would need to check records. I</b> 18 <b>don't know exactly.</b> 19 Q And you said from the beginning. 20 What did you mean by that? 21 A <b>Well, this started 2018, I believe.</b> 22 Q Okay. And I would like to move on to another 23 exhibit -- or document, I should say. 24 Can you see the document that's up on the screen? 25 A <b>Yeah.</b></p>

Page 158	Page 159
<p>1 Q Have you ever seen this document before?</p> <p>2 A <b>I don't think so. Let me read it.</b></p> <p>3 <b>"Mr. Ruben Gonzalez has been employed with Baja</b></p> <p>4 <b>Concrete USA from June to present, construction</b></p> <p>5 <b>foreman, earns \$35 hourly, he's paid biweekly, and he</b></p> <p>6 <b>makes approximately 5600 a month. Regards, Claudia</b></p> <p>7 <b>Penunuri."</b></p> <p>8 <b>I guess Claudia did it. I don't know. But I can</b></p> <p>9 <b>check if that is Claudia's signature.</b></p> <p>10 Q Have you seen Claudia's signature before?</p> <p>11 A <b>Oh, yeah. Yeah.</b></p> <p>12 Q Does this appear to be Claudia's signature?</p> <p>13 A <b>I don't recall now. I would need to see other</b></p> <p>14 <b>documents signed by Claudia, then I can tell you if</b></p> <p>15 <b>it's hers or not.</b></p> <p>16 Q Does this document appear to be on Baja Concrete USA's</p> <p>17 letterhead?</p> <p>18 A <b>Yeah, it is on the letterhead. And it doesn't have</b></p> <p>19 <b>any address. It doesn't have any phone number. I</b></p> <p>20 <b>mean, if you're giving this to an employee, to</b></p> <p>21 <b>somebody, so he's probably looking for a job or</b></p> <p>22 <b>getting something. So somebody did it, but we didn't</b></p> <p>23 <b>do it. Mercedes Accounting didn't do it.</b></p> <p>24 Q Do you see this phone number at the bottom,</p> <p>25 215-205-3939?</p>	<p>1 A <b>Yep.</b></p> <p>2 Q Is that Claudia's cell phone number, or is that a</p> <p>3 phone number for her?</p> <p>4 A <b>Well, I don't know. But I can check my phone to see</b></p> <p>5 <b>if that's her number. You know, you have recorded on</b></p> <p>6 <b>the phone everybody's phone number, so no need to</b></p> <p>7 <b>memorize.</b></p> <p>8 Q Understood.</p> <p>9 And I want to go on to a different document. And</p> <p>10 I'm going to scroll down to the bottom.</p> <p>11 Do you see this Bates stamp number at the bottom,</p> <p>12 SEATTLE-OLS-0250?</p> <p>13 A <b>Uh-huh.</b></p> <p>14 Q I'm going to scroll to the end of the document.</p> <p>15 Do you see this last Bates number,</p> <p>16 SEATTLE-OLS-0254?</p> <p>17 A <b>Yeah.</b></p> <p>18 Q So I'm going to scroll back up to the top and then I'm</p> <p>19 going to give you a chance to take a look at this.</p> <p>20 Let me know if you can't read it.</p> <p>21 A <b>You're going too fast. I cannot read that fast.</b></p> <p>22 Q I apologize.</p> <p>23 A <b>The question is about the contents of this?</b></p> <p>24 Q Yes, and I'll give you an opportunity to go back and</p> <p>25 take a look at it.</p>
<p>Page 160</p> <p>1 A <b>Yeah, but the important thing is what you have</b></p> <p>2 <b>highlighted. "There are no pay stubs to Antonio</b></p> <p>3 <b>Machado since the company started business. He's not</b></p> <p>4 <b>an employee of the company.</b></p> <p>5 <b>Roberto Soto works for the Canada company named</b></p> <p>6 <b>Baja Concrete Ltd. Attach invoice.</b></p> <p>7 <b>"Roberto Soto is not an employee of Baja</b></p> <p>8 <b>Concrete," yeah.</b></p> <p>9 Q So, Ms. De Armas, do you recognize this email?</p> <p>10 A <b>Well, it has my name. I probably did write it. It</b></p> <p>11 <b>looks like me. It has my signature; right?</b></p> <p>12 Q Is that your signature at the bottom?</p> <p>13 A <b>Yep.</b></p> <p>14 Q So is this an email that you sent to Daron Williams on</p> <p>15 December 7th, 2020?</p> <p>16 A <b>Yes. I was answering some of his questions.</b></p> <p>17 Q Sure.</p> <p>18 And so do you see this No. 1 here?</p> <p>19 A <b>Yep.</b></p> <p>20 Q Can you read the response that you included in this</p> <p>21 email?</p> <p>22 A <b>All of them?</b></p> <p>23 Q Just to No. 1.</p> <p>24 A <b>Per attached report, you can see deductions are either</b></p> <p>25 <b>payroll advances or personal items," and that's</b></p>	<p>Page 161</p> <p>1 <b>probably with the deductions in that report that you</b></p> <p>2 <b>guys show earlier. I'm assuming that's the attach</b></p> <p>3 <b>report.</b></p> <p>4 MR. LARKIN: Just read it.</p> <p>5 THE WITNESS: "Per attached report,</p> <p>6 you can see deductions are either payroll advances or</p> <p>7 personnel items purchased by the company credit card</p> <p>8 and deducted in the employee paychecks per their</p> <p>9 request. Some employees run out of funds and request</p> <p>10 the supervisor personal help with shoes, flight</p> <p>11 tickets, et cetera, and the supervisor is using the</p> <p>12 company credit card for this type of payroll advances.</p> <p>13 We do not have any complaints from any employee</p> <p>14 regarding the deductions. The use of the company</p> <p>15 credit card to purchase items for employees is</p> <p>16 discontinued. Currently, the company is giving</p> <p>17 payroll advances and loans to employees if they</p> <p>18 qualify. Company policy does not include benefits for</p> <p>19 any living costs."</p> <p>20 Q Okay. Thank you, Ms. De Armas. You can stop reading</p> <p>21 there.</p> <p>22 So you mentioned a supervisor in this paragraph.</p> <p>23 Who are you referring to there?</p> <p>24 A <b>Well, when they are -- the laborers, the people that</b></p> <p>25 <b>is hired, there are hired people. They have different</b></p>

Page 162	Page 163
<p>1 levels. We see this in payroll. We see what is the 2 labor, we see what is the finishers, we see what is 3 the helper, and we see what is supervisor. So some of 4 them were supervisors. 5 Q Okay. So when you say "some of them," you're saying 6 some of the Baja USA employees were supervisors? 7 A Yeah. The ones that we run in payroll. Some of them 8 supervisors, were in charge. 9 Q And who was running payroll? 10 A Baja -- Roberto had sometimes people in two projects 11 at the same time. So there was somebody in charge in 12 one, and he probably was at the other one. I don't 13 know. But they were supervisor, personal among those 14 employees. 15 Q And so you say the supervisor is using the company 16 credit card. 17 So did someone other than Roberto Contreras have 18 access to Baja USA's credit card? 19 A Yeah. 20 Q And who would that have been? 21 A Well, I'm trying to remember the name, but I can give 22 it to you. I can see the records. Because there 23 aren't very many people, so I need to -- I think one 24 of them -- wow, it's a guy from -- let me see if I can 25 remember his name. But if I review the payroll, I can</p>	<p>1 tell you which one are they. 2 Q Okay. You just can't tell me today off the top of 3 your head? 4 A Well, I don't remember. There are too many -- too 5 many things, too many people. 6 Q Okay. And then, Ms. De Armas, can you tell me, what 7 is Baja USA's business that they are in? 8 A Baja was in the business of providing labor to 9 projects and other companies and general contractors. 10 That was the main thing they were doing, providing 11 labor. 12 Q Okay. And I think earlier in your deposition you had 13 said something about Roberto Contreras would sometimes 14 send emails to Claudia and copy Kwynne regarding 15 invoices or summaries of worker time for payroll 16 purposes. 17 Did I understand that correctly? 18 A If you are saying that Roberto -- could you say that 19 again? 20 Q So you had said, to my understanding, that Roberto had 21 sent emails to Claudia and copied Kwynne. 22 Did I understand that correctly? 23 A Yeah, regarding receivables. Regarding, you know, 24 getting paid. 25 Q So is that -- are those emails something tag Baja USA</p>
<p>Page 164</p> <p>1 would still have possession of? 2 A Yes, we will have them. 3 Q I think you alluded to this earlier, but I just wanted 4 to clarify. 5 Was Baja USA paying for taxes to the government 6 on these workers? 7 A Okay. Let me see if I understand your question. 8 You are saying that Baja Concrete USA was paying 9 taxes to the government? 10 Q On behalf of these workers. So I'm asking you if they 11 did. 12 A Okay. You are talking about payroll taxes. 13 Yes. Every single penny was paid in full. 14 Q Okay. And did Baja Canada pay any money to Baja USA 15 regarding these workers and payroll? 16 A No. It was just for the -- Roberto Contreras and 17 that. And I don't know if it was another service, but 18 no. Baja Concrete USA was paying everything for the 19 workers. 20 Q Okay. And you testified that Baja USA hired Mercedes 21 Accounting to do payroll and accounting for them; is 22 that correct? 23 A That is correct. 24 Q So if I understand it correctly -- let me rephrase the 25 question.</p>	<p>Page 165</p> <p>1 So if Baja's USA role was to provide labor, how 2 did Baja USA do that? 3 A Roberto Contreras, right, was looking for the labor, 4 recruiting the labor, interviewing the labor, got them 5 together. Roberto Contreras did all of that. 6 Q Okay. So if Roberto Contreras was dealing with all of 7 the labor and Mercedes Accounting was doing payroll 8 and accounting, what was Baja USA's role in all of 9 this? 10 A Well, obviously, Baja Concrete USA is the one in 11 charge here; right? They needed to make sure every -- 12 the payroll was done, the taxes were paid. All kinds 13 of thing. All the bookkeeping was done. That's why 14 they hire us. Claudia was overseeing, you know, the 15 stuff but -- 16 Q So what was Claudia's oversight? What did that 17 involve? 18 A She will call me, we will have meetings regarding how 19 thing were going, you know. Every, you know -- she 20 will receive reports, you know. So she knows. 21 She was mainly focusing in the receivables. But 22 we were not doing receivables. The only thing was out 23 of the contract. I don't do receivables for any 24 client. So the receivables is done by Baja Concrete 25 directly. And that's why you see those invoices</p>

Page 166	Page 167
<p>1 handwritten by Roberto Soto. He and Claudia will 2 manage that, review that, and they are the ones who 3 will talk to Kwynne in Newway Forming. 4 Only maybe a couple of times or three times they 5 asked me to email Kwynne because they were not getting 6 paid on time. They were three months behind. And I 7 just wrote and email, maybe once or twice, just 8 letting them know that, you know -- because it was an 9 emergency. They don't pay, how can we pay the 10 workers? 11 Q Okay. 12 MS. KINCAID: I don't think I have 13 any further questions. So I will turn this over in 14 case anybody has any additional questions. 15 MS. WOLFE: I just have one quick 16 follow-up question. 17 18 FURTHER EXAMINATION 19 BY MS. WOLFE: 20 Q You said that there was some supervisors that worked 21 for Baja. 22 What were those supervisors doing on the project? 23 A Okay. Of all of labor that was on the sites, there 24 were people that were prepared with experience and 25 they were supervising the other employees.</p>	<p>1 Supervising, meaning they would get there, they make 2 sure they have all of the -- you know, I know Newway 3 Forming was providing some of the security things, 4 safety things, making sure they were wearing, making 5 sure, you know, everybody was -- what a supervisor 6 does. 7 Q Okay. And I'm referring to the Baja supervisor that 8 you were discussing earlier. 9 A Remember, these supervisors -- it's kind of confusing 10 because all of these employees on payroll are the ones 11 Roberto hire and report, okay. And they were the ones 12 that provide the labor. 13 And Baja -- yes, Baja is in the business of 14 providing labor, right. But Baja had this person call 15 Roberto Contreras that's coming from Canada. They had 16 that agreement together. And they were the ones to -- 17 it was directly. 18 And then we were doing the payroll for Baja, 19 right, because all of these employees were actually 20 Baja employees, right, that we would process and paid 21 everything that we needed to do. 22 So sometimes it's a little bit confusing. 23 Q Okay. I understand that. And what I'm asking is, the 24 Baja supervisors you mentioned earlier, they were 25 doing things that Baja supervisors do, which is</p>
<p>1 supervising other Baja employees. 2 So if one of those other Baja employees were sick 3 or something, for instance, would they tell the Baja 4 supervisor they were sick before leaving? 5 A Oh, yeah, of course. And the supervisor will tell 6 Roberto, and Roberto will report anything that needed 7 to be reported. 8 MS. WOLFE: Okay. Thank you. 9 That's all I have. 10 MR. LARKIN: Okay. Anybody else, 11 follow-up questions? 12 Do you have questions or no? 13 MS. FRANKLIN: No further questions 14 on the City's end. 15 MR. LARKIN: Just give me one moment 16 to look at my notes here. 17 18 EXAMINATION 19 BY MR. LARKIN: 20 Q So, Mercedes -- by the way, I'm Alex Larkin, one of 21 the lawyers for Baja Concrete USA Corp. 22 Is Baja Concrete USA a for-profit business 23 entity? 24 A Yes, it is. 25 Q So when we looked at some exhibits where it showed</p>	<p>1 what appeared to be hourly rates charged by Baja to 2 Newway -- do you recall? 3 A You mean the invoice? 4 Q Invoices, yes. 5 A Uh-huh. 6 Q And we looked at hourly rates, I think, or tell me if 7 I'm wrong, where the amount invoiced on a per-hour 8 basis to Newway was a bigger number than what was paid 9 to the workers on a per-hour basis? 10 A You mean the hourly rate Newway was paying Baja 11 Concrete -- 12 Q Yes. 13 A -- was higher? Yes, was higher. 14 Q Okay. Which would be perfectly normal for a 15 profit-seeking business; right? 16 A Yes. 17 Q Roberto Contreras, is he an employee of Baja Concrete 18 USA Corp.? 19 A No, never was. 20 Q Never was? 21 A Never. 22 Q Never was. Okay. 23 Would you mind spelling, if you could, the name 24 Kwynne. You mentioned Kwynne at Newway. 25 A It's difficult for me how she spell it. I call her</p>

**BAJA CONCRETE USA**

Concrete Dry Finish (Sack Rub, Patching)  
Concrete Self Level • Concrete Forming

Roberto  
Carlos

Cell 360.559.9400  
Cell 780.885.6123

12736 SW 133rd St. • Miami, FL 33186  
jrconcrete99@gmail.com

5/11/2022 Deposition Excerpts:  
Mercedes de Armas (individually)

**EXHIBIT C**  
**TO DECLARATION OF LORNA S. SYLVESTER**

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of: )

)  
BAJA CONCRETE USA CORP., ROBERTO ) Hearing Examiner File:  
CONTRERAS, NEWWAY FORMING INC., ) No.: LS-21-002

And ANTONIO MACHADO ) LS-21-003

) LS-21-004

From a Final Order of the Decision)

Issued by the Director, Seattle )

Office of Labor Standards )

VIDEOCONFERENCE DEPOSITION OF MERCEDES Z. DE ARMAS

May 11, 2022

Taken Remotely via Zoom

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



<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 For Appellant Baja Concrete (via Zoom):</p> <p>3 Alex Larkin</p> <p>4 MDK Law</p> <p>5 777 108th Avenue NE</p> <p>6 Suite 2000</p> <p>7 Bellevue, Washington 98004</p> <p>8 425.455.9610</p> <p>9 alarkin@mdklaw.com</p> <p>10 For Appellant Newway Forming Inc. (via Zoom):</p> <p>11 Nicole Wolfe</p> <p>12 Oles Morrison Rinker Baker</p> <p>13 701 Pike Street</p> <p>14 Suite 1700</p> <p>15 Seattle, Washington 98101</p> <p>16 206.623.3427</p> <p>17 wolfe@oles.com</p> <p>18 For Appellant Antonio Machado (via Zoom):</p> <p>19 Sara Kincaid</p> <p>20 Roche Law Group, PLLC</p> <p>21 500 Union Street</p> <p>22 Suite 909</p> <p>23 Seattle, Washington 98101</p> <p>24 206.652.8670</p> <p>25 sara@rockelaw.com</p> <p>17 For Respondents, City of Seattle and The Seattle Office of Labor Standard (via Zoom):</p> <p>18 Lorna S. Sylvester</p> <p>19 Erica Franklin</p> <p>20 Seattle City Attorney's Office</p> <p>21 701 5th Avenue</p> <p>22 Suite 2050</p> <p>23 Seattle, Washington 98104</p> <p>24 206.733.9309</p> <p>25 Lorna.sylvester@seattle.gov</p> <p>Erica.franklin@seattle.gov</p> <p>Also present: Claudia Penunuri</p>	<p style="text-align: right;">Page 3</p> <p>1 EXAMINATION INDEX</p> <p>2 EXAMINATION BY: PAGE NO.</p> <p>3 Ms. Sylvester 6</p> <p>4 Ms. Wolfe 138</p> <p>5 Mr. Larkin 139</p> <p>6 Ms. Sylvester 143</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 EXHIBIT INDEX</p> <p>13 EXHIBIT NO. DESCRIPTION PAGE NO.</p> <p>14 Exhibit No. 1 1-page paystub for Antonio Machado 44</p> <p>15 dated 08/08/2019</p> <p>16 Exhibit No. 2 5-page email string, top email dated 50</p> <p>17 December 7, 2020</p> <p>18 Exhibit No. 3 1-page Baja Concrete USA Corp 61</p> <p>19 Deductions and Contributions</p> <p>20 Exhibit No. 4 4-page Baja Concrete USA time sheet 69</p> <p>21 Exhibit No. 5 44-page paystubs for Gerardo Valencia, 73</p> <p>22 Bates APPBAJA0685 through 0728</p> <p>23 Exhibit No. 6 35-page paystubs for Hector Cespedes 75</p> <p>24 Rivera, Bates APPBAJA0729 through 0763</p> <p>25 Exhibit No. 7 27-page paystubs for Ivan Ponce, Bates 94</p> <p>APPBAJA0785 through 0811</p> <p>Exhibit No. 8 15-page paystubs for Noe Rios Estrada, 118</p> <p>Bates APPBAJA1075 through 1088</p>
<p style="text-align: right;">Page 4</p> <p>1 EXHIBITS (Continued)</p> <p>2 Exhibit No. 9 14-page Baja Concrete USA Corp 120</p> <p>3 Payroll Summary 01/01/2017 - 06/12/2020</p> <p>4 Exhibit No. 10 63-page Baja Concrete USA Time Sheets, 125</p> <p>5 Bates APPBAJA0185 through 0247</p> <p>6</p> <p>7</p> <p>8</p> <p>9</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 5</p> <p>1 BE IT REMEMBERED that on Wednesday,</p> <p>2 May 11, 2022, at 9:07 a.m., before Michelle D.</p> <p>3 Elam, Certified Court Reporter, RPR, appeared via</p> <p>4 Zoom, MERCEDES Z. DE ARMAS, the witness herein;</p> <p>5 WHEREUPON, the following</p> <p>6 proceedings were had remotely:</p> <p>7</p> <p>8 &lt;&lt;&lt;&lt;&lt;&lt; &gt;&gt;&gt;&gt;&gt;&gt;</p> <p>9</p> <p>10 MERCEDES Z. DE ARMAS, having been first duly</p> <p>11 sworn by the Certified</p> <p>12 Court Reporter, testified</p> <p>13 as follows:</p> <p>14</p> <p>15 MR. LARKIN: Maybe I should clarify</p> <p>16 one thing.</p> <p>17 So I'm here for Baja Concrete, of course.</p> <p>18 Mercedes, herself, is not our client. But for</p> <p>19 convenience, it just worked better to have her here in</p> <p>20 our conference room for this.</p> <p>21 MS. SYLVESTER: Thank you,</p> <p>22 Mr. Larkin. That was going to be one of my questions.</p> <p>23 ///</p> <p>24 ///</p> <p>25 ///</p>

Page 6

1 EXAMINATION

2 BY MS. SYLVESTER:

3 Q Good morning, Ms. De Armas.

4 My name is Lorna Staten Sylvester, and I

5 represent the City, along with Ms. Erica Franklin, who

6 conducted the deposition of you before.

7 MR. LARKIN: Sorry.

8 Are we waiting for someone from Newway?

9 MS. SYLVESTER: We have --

10 MS. WOLFE: I'm here, Alex. My

11 video is just not working today.

12 MR. LARKIN: Oh, okay. Sorry.

13 MS. WOLFE: Yeah.

14 MR. LARKIN: Sorry.

15 Q (By Ms. Sylvester) Okay. So if you can state your

16 name and spell your name for the record, please.

17 A Mercedes De Armas. M-e-r-c-e-d-e-s, capital D-e,

18 space A-r-m-a-s.

19 Q Okay. And can you state your business address for the

20 record as well.

21 A Okay. I'm a little bit confused because I'm here as

22 Mercedes De Armas, and my understanding is that I'm

23 personally here, which I -- Mercedes De Armas has no

24 business with Baja or this deal. So I don't know why

25 I was subpoenaed.

Page 8

1 A No.

2 But I just need to say that now I have more

3 experience. It will be a better deposition from last

4 time because now I know what I'm doing better.

5 Q Okay. Great.

6 So we've already heard this, but is there -- for

7 the record, is there anyone in the room with you?

8 A No. Just Mr. -- Alex.

9 Q Mr. Larkin?

10 A Yeah.

11 Q Okay. And there are a couple of rules that you may

12 recall. We went over some rules the last time that

13 you were deposed. So I would just like to go through

14 those again.

15 First, you're required to give full, nonevasive

16 truthful answers.

17 You understand that?

18 A Yes.

19 Q Okay. And if you could answer verbally because

20 shaking your head or nodding won't be picked up on the

21 record. So if you could just answer verbally.

22 Instead of saying "uh-huh" or "huh-uh," if you could

23 say "yes" or "no."

24 A Okay.

25 Q Okay. Also, we can take breaks if you need a break.

Page 7

1 Q Okay. Ms. De Armas, we're going to get to that.

2 If you could state your business address for the

3 record.

4 A You mean Mercedes Accounting?

5 Q Correct, your business address.

6 A Mercedes Accounting & Associates is now located at

7 12727 Northup Way, Suite 7, in Bellevue, Washington

8 98005.

9 Q Okay. Thank you.

10 So we're here to take your deposition In The

11 Matter of the Appeal of Baja Concrete USA, Roberto

12 Contreras, Newway Forming Inc., and Antonio Machado.

13 The Hearing Examiner Case Nos. are LS-21-002,

14 LS-21-003, and LS-21-004.

15 We're here to find out everything that you know

16 about these claims that Baja, Newway, and

17 Mr. Contreras and Mr. Machado failed to pay wages for

18 all hours worked, including overtime, and failed to

19 provide sick and safe time in violation of SMC 1416,

20 1419, and 1420, beginning in February of 2018 to

21 August of 2020.

22 So today is there anything such as stress,

23 physical or mental conditions, or being under the

24 influence of any substances that would prevent you

25 from answering truthfully today?

Page 9

1 However, if there is a pending question, we would ask

2 that you answer the question prior to any breaks?

3 A Understood.

4 Q Okay. And if I refer to the relevant time period, I'm

5 referring to February of 2018 to August of 2020.

6 Okay?

7 A Okay.

8 Q Okay. And also if I refer to Baja generally, I'm

9 talking about Baja Concrete USA, but I may refer to

10 Baja Ltd., which is the one that is in Canada, but I

11 will specify that. But generally, if I just say just

12 "Baja," I'm talking about Baja Concrete USA.

13 A Okay.

14 Q Okay. And lastly, even though you're testifying today

15 as Mercedes De Armas, I would ask that you answer my

16 question if you can, unless it falls under some sort

17 of privilege. So if you know the answer, regardless

18 of how you came to know the answer, I would ask that

19 you answer my question.

20 If you don't know, it's fine to say "I don't

21 know." Or if you need clarification, it's fine to say

22 that you need clarification. Okay?

23 A You mean, Ms. Lorna, that if I know the answer because

24 I met with someone and I know it through the other

25 person, when I answer, I should say I met with someone

Page 22

1 A No. Businesses in my name, I don't remember. I think  
2 it's just Pay & HR and Mercedes Accounting.  
3 Q Okay. So is Baja Concrete USA one of the accounts  
4 that you manage or maintain?  
5 A That is one of our clients, yes.  
6 Q And do you work for both Baja Concrete USA and Baja  
7 Concrete Ltd.?  
8 A No. We don't -- Baja Concrete Ltd. -- I don't even  
9 know. I have no -- that's not my client.  
10 Q Okay. You say you don't know them, but you know who  
11 they are?  
12 A Well, I get to know them through Baja Concrete USA  
13 because the agreement that started in Canada and then  
14 came to Baja Concrete USA. So I know about that  
15 agreement and the conversation that Claudia explained  
16 to me and Carlos about the USA, Baja Concrete USA.  
17 Q Okay. So can you tell us your role -- what is your  
18 role for Baja Concrete USA?  
19 A We do the payroll, we do the accounting, we make sure  
20 the licenses that they have are up-to-date. Like,  
21 Secretary of State or, you know, for L&I, whatever the  
22 contractor license.  
23 But I don't have authority over those. If the  
24 owner decided to cancel the license, it is canceled.  
25 I don't have -- I don't have any authority, you

Page 24

1 So we had a meeting about their needs and what  
2 they were going to do. So he had a consultation. I  
3 explained him all of the licensing and everything he  
4 needed to have. He already knew a lot about it. He  
5 was just trying to see, okay, maybe we'll need  
6 payroll. And then, of course, Claudia is the owner,  
7 she hired me.  
8 Q Okay. And can you tell me all of the duties that you  
9 have performed for Baja Concrete USA?  
10 MR. LARKIN: I'm sorry. Lorna,  
11 maybe could you clarify. When say "you," are you  
12 referring to her personally or, again, in connection  
13 with Mercedes Accounting?  
14 MS. SYLVESTER: Well, she can  
15 explain --  
16 MR. LARKIN: Okay.  
17 MS. SYLVESTER: -- either role.  
18 Q (By Ms. Sylvester) Either as your role in Mercedes  
19 Accounting or as an employee of Mercedes Accounting.  
20 A I'm going to make a clarification.  
21 As Mercedes Accounting -- all of the answers I  
22 have given is Mercedes Accounting. I've been talking  
23 about Mercedes Accounting as the CEO and owner for  
24 Mercedes Accounting. Everything so far has been  
25 Mercedes Accounting.

Page 23

1 know -- I'm delegating the accounting, yes, the  
2 bookkeeping, the taxes, and the payroll.  
3 Q You said payroll, accounting, licensing, and taxes.  
4 And bookkeeping?  
5 A Yeah. Yes, bookkeeping.  
6 Q Okay. So is bookkeeping separate from accounting?  
7 A We call it -- when we say "accounting," we're talking  
8 about the whole kind of reports. Detailed  
9 financials -- you know, when we're talking about  
10 bookkeeping, we're talking about data entry,  
11 employees, you know. But that all needs to be  
12 reviewed by accountants, and the accountant is the one  
13 that will put the financials together. And then I  
14 would review them too.  
15 Q Okay. Are you a registered agent for either one, for  
16 either Baja Concrete USA or Baja Concrete Ltd.?  
17 A I'm not a registered agent, and I have never had any  
18 business with Baja Concrete Ltd. And I think Baja  
19 Concrete USA, I think is -- Claudia is the registered  
20 agent.  
21 Q Okay. So who hired you for -- to work for Baja  
22 Concrete USA?  
23 A Claudia hired me, but Roberto Contreras was the first  
24 one that came to my office to have a meeting. I don't  
25 charge for people that are willing to see their needs.

Page 25

1 Q Okay. And what duties -- name all of the duties that  
2 you perform for Baja Concrete USA.  
3 A When you are saying "duties," what do you refer to?  
4 You mean payroll?  
5 Q Is that one of the duties that you perform?  
6 A I don't perform it but the company does.  
7 Q Okay.  
8 A I don't do it directly but the company does. The  
9 payroll department will do the payroll for Baja  
10 Concrete.  
11 Q And what other duties?  
12 A The taxes.  
13 (Ms. Wolfe dropped off the  
14 deposition.)  
15 THE COURT REPORTER: Ms. Sylvester,  
16 we've lost Ms. Wolfe, I believe.  
17 MS. SYLVESTER: Okay. I can pause  
18 for a moment.  
19 (Ms. Wolfe rejoined the  
20 deposition.)  
21 Q (By Ms. Sylvester) So we were talking about the  
22 duties that you -- either you as Mercedes De Armas as  
23 an employee of Mercedes Accounting or the duties  
24 performed by Mercedes Accounting for Baja Concrete  
25 USA.

Page 102

1 my job to do this. I'm not in charge of the labor.  
2 Q Okay. So are you saying -- is it your testimony that  
3 sick leave balances were maintained in an Excel  
4 spreadsheet?  
5 A Yes, they were.  
6 Q And is it your testimony that you know from your  
7 personal knowledge that that Excel spreadsheet was  
8 shared with employees?  
9 A As Mercedes Accounting and as Mercedes De Armas,  
10 employee of Mercedes Accounting, I don't know if they  
11 were shared with employees because --  
12 Q Okay.  
13 A -- I wasn't there.  
14 Q Okay. So then if you don't know, then I would ask  
15 that you indicate, "I don't know."  
16 A Okay. I don't know.  
17 Q All right. So can you see from this pay stub, if a  
18 worker was to get this pay stub, then he's not being  
19 informed of how much sick time he's accruing.  
20 Would you agree with that?  
21 A Well, yes and no. Yes, because the pay stub is not  
22 accruing. No, because Roberto has the Excel and he  
23 was probably informed through Roberto about it.  
24 Q Well, do you know -- do you know whether Roberto was  
25 informing the workers about their sick leave balances?

Page 104

1 So I am just saying that I recall some of the  
2 payroll summaries that he put sick hours and that  
3 makes me to believe that he was letting them know  
4 because he was requesting and paying them.  
5 Q Okay. Do you know if Baja Concrete USA was letting  
6 employees know of their sick leave balances?  
7 A Well, there is no contact between Baja Concrete saying  
8 Claudia and the employees. The contact was always  
9 Roberto Soto with employees.  
10 Q Okay. But Roberto Soto wasn't paying the employees.  
11 Baja Concrete USA was paying the employees; is that  
12 right?  
13 A Yeah, but all of the information is coming from  
14 Roberto and Newway Forming to the process.  
15 Q Okay. But since --  
16 A Roberto is an independent contractor, right. Some  
17 kind of -- something like that, I guess. I don't know  
18 how to call it because it's an agreement between  
19 Canada and this. And he came from Canada.  
20 So he's a third-party, and he's in charge of all  
21 of that. He's running the whole scenario. I don't  
22 know what happened on the sides when they were there.  
23 I never heard anybody complaining about it.  
24 Q Okay. You just referred to the exhibit that's up  
25 right now, Exhibit No. 5, the pay stub for Gerardo

Page 103

1 A No. I --  
2 MR. LARKIN: Object to the form of  
3 the question.  
4 Go ahead.  
5 THE WITNESS: Yeah, but I don't know  
6 because I wasn't there. But I do know by emails and  
7 correspondence, you know, that he was informing some  
8 sick pay for some of the employees and they were in  
9 the pay stubs.  
10 Q (By Ms. Sylvester) Are you saying that you have  
11 emails that would demonstrate that employees were  
12 informed of their sick leave balances?  
13 A No. He will report -- in the payroll summaries, he  
14 will report that this person has sick hours, how many.  
15 He would put it in the payroll summary.  
16 Q Okay. But then that information was not reflected on  
17 the pay stub; right?  
18 A Well, I don't -- well, yeah, it can be in Excel. It  
19 can be in Excel. It could be -- two systems. The  
20 Excel and the pay stub. By law, the two of them are  
21 acceptable.  
22 The importance is that the employer, in this case  
23 it's Roberto Soto, he needed to share with employees  
24 that and inform them, because he was in charge of all  
25 of that. We just provided the information to him.

Page 105

1 Valencia, currently on Page 42.  
2 Is there an employer listed there?  
3 A I'm sorry. Could you repeat that question?  
4 Q If we're looking at Exhibit No. 5, the pay stub for  
5 Gerardo Valencia.  
6 A The one that I see I can see right now. You are  
7 talking about this one?  
8 Q Yes. It's up right now.  
9 A Okay.  
10 Q It's on Page 42.  
11 A Okay.  
12 Q Do you see that?  
13 A Yes, I do.  
14 Q I believe the pay date is May 8th?  
15 A 2020.  
16 Q 2020. I'm sorry. Yes. 2020.  
17 A Yes.  
18 Q Is there an employer listed there?  
19 A Yeah. It's Baja Concrete USA.  
20 Q It doesn't say Roberto Contreras, does it?  
21 A Correct, it doesn't say Roberto Contreras.  
22 MS. SYLVESTER: Okay. All right.  
23 So it is now 12:08, and I have quite a few more  
24 questions. So do we want to take a lunch break or how  
25 would everybody --

Page 126

1 MS. SYLVESTER: I don't know if  
2 there's a way that you can turn it. Is there a way to  
3 do that?  
4 THE WITNESS: I think the little  
5 hand will help you to put it into landscape format.  
6 MS. SYLVESTER: See if you can turn  
7 it around.  
8 Okay. Thank you so much.  
9 Q (By Ms. Sylvester) So do you see a date indicated at  
10 the top there?  
11 A I'm sorry?  
12 Q Kind of underneath 1120 Denny Way.  
13 A What was the question?  
14 Q Do you see the date?  
15 MR. LARKIN: You are kind of  
16 breaking up a little bit, your audio, Lorna.  
17 Q (By Ms. Sylvester) Can you hear me?  
18 A Yes.  
19 Q Okay. So do you see the date at the top?  
20 A Yeah. It's February 20th, 2018, and  
21 February 23, 2018. It was written in the other  
22 standard format, the date.  
23 Q Right.  
24 A European style.  
25 Q With the date first?

Page 128

1 THE WITNESS: The one that we see is  
2 not 2018, it's 2019.  
3 MR. LARKIN: Right.  
4 Q (By Ms. Sylvester) Okay. And if you scroll down, do  
5 you see any pay stubs for 2018 in this pack of pay  
6 stubs for Mr. Rios?  
7 MR. LARKIN: The dates are getting  
8 more recent.  
9 Sorry. I'm not supposed to respond.  
10 THE WITNESS: No, that's correct.  
11 It's coming to -- you have to see them all. You don't  
12 know if there's going to be one in the middle.  
13 Q (By Ms. Sylvester) Lucky I picked a small --  
14 A It loos like -- could you go to the first one,  
15 Ms. Lorna, please?  
16 Q And it's the lovely exhibit technician that is --  
17 Ms. Allison who is doing all of the scrolling, and I  
18 appreciate her.  
19 But yes, this is the first one. So this is  
20 Page 1.  
21 A Okay. There is none, then. I didn't see any for  
22 2018.  
23 Q And then on the payroll summary, which is Exhibit 9, I  
24 believe; right?  
25 A Yes.

Page 127

1 A That's Canada. Canada uses that.  
2 Q Okay. And you see the first name noted on there?  
3 A Noe R. I guess Noe Rios.  
4 Q Okay. And how many hours did Noe Rios work that week?  
5 MR. LARKIN: We can't see the far  
6 right portion of this page because all of our video  
7 faces are covering it up.  
8 EXHIBIT TECH: You can minimize that  
9 view. If you hover over the boxes, you can just click  
10 one of those smaller looking -- it says "Hide  
11 thumbnail."  
12 MS. SYLVESTER: You can also move  
13 the box to the other side, which is what I did.  
14 THE WITNESS: Oh, yeah. That's  
15 easier.  
16 EXHIBIT TECH: That works too.  
17 Q (By Ms. Sylvester) So now how many hours does it say  
18 that --  
19 A Thirty-six.  
20 Q Okay. And this was in 2018?  
21 A Yes.  
22 Q Okay. So in the packet of pay stubs for Mr. Rios in  
23 Exhibit No. 8, is there any corresponding pay stub for  
24 Mr. Rios for that date in 2018?  
25 MR. LARKIN: So --

Page 129

1 Q On the payroll summary, what's the first date for him,  
2 for Mr. Noe?  
3 A I see zero on the first column after his name.  
4 Q Right. But what's the date?  
5 A February 1st, 2019.  
6 Q Okay.  
7 A So there's no '18, is what you're saying?  
8 Q Yes.  
9 A Yeah, I see there is no '18.  
10 Q Okay. I'm almost done.  
11 MR. LARKIN: Good.  
12 THE WITNESS: What is the question?  
13 MR. LARKIN: There's no question.  
14 MS. SYLVESTER: There's no question.  
15 I'm just letting you know I'm almost done.  
16 THE WITNESS: Okay.  
17 Q (By Ms. Sylvester) Okay. So did you, Mercedes De  
18 Armas or did Mercedes Accounting, conduct any  
19 on-boarding for new Baja employees? And by  
20 "on-boarding" I mean working with employees on signing  
21 paperwork like W-4s or any other documents to indicate  
22 to an accounting service what should be taken out of  
23 that employee's pay?  
24 A You mean if we met with the employees to check -- to  
25 talk to them directly?

Page 130

1 Q Yes, to get them --  
2 A No, we did not. Not at all. Not even once.  
3 Q Okay. And do you know what records you provided to  
4 OLS that would demonstrate Baja USA paid sick and safe  
5 time policy?  
6 A I gave to OLS the Excel for the sick pay, a  
7 calculation how we give it the hourly and the  
8 accruing -- the accrual of hours for employee. I gave  
9 them in Excel.  
10 Q Okay. When you worked with Baja to provide documents  
11 to the Office of Labor Standards, did you find that  
12 some records were missing?  
13 A I don't recall now.  
14 Q For example, we just went over Mr. Rios' pay stubs.  
15 And if he was on the time sheets in 2018, did you  
16 find that his 2018 pay stub information was missing?  
17 A Remember, we receive the payroll summaries from  
18 Roberto. If he doesn't have anything in 2018, Roberto  
19 did not report hours for him in 2018.  
20 And that time sheet is not what payroll was based  
21 on. Roberto was giving us a payroll summary to  
22 process payroll. Those time sheets that you just  
23 showed are only attached to the invoices.  
24 So we never -- this is the first time I see that  
25 time sheet attached to the invoice because I was not

Page 132

1 receive -- we were not preparing that, so we never  
2 really -- we just put the numbers.  
3 Q So you did house records that were provided to you by  
4 Roberto on behalf of Baja?  
5 A If he email it to us, I have a copy.  
6 Q And what types of documents are you talking about?  
7 A I'm talking about payroll summaries, I'm talking about  
8 W-4s, copies, right, that he probably sent to payroll  
9 for payroll. And he copied me on the invoices.  
10 Q So the invoices that we just saw, something like  
11 those?  
12 A Yeah, something like those.  
13 Q And when you were copied on the emails with the  
14 invoices, did they include the time sheets that we  
15 also saw?  
16 A I think so.  
17 Q Okay.  
18 A Can I clarify something?  
19 Q Sure.  
20 A We don't process receivables for any client. So that  
21 was information and we used the invoice to note the  
22 invoices when they receive the payment, will receive a  
23 copy of the check, and we will know the invoice was  
24 paid in that case. That's it.  
25 We have nothing to do with the hours put in the

Page 131

1 reviewing the invoices and the attachments, okay. I  
2 just have a page and whatever was missing for  
3 receivables, for financials and put it there. But I  
4 was not really reviewing this between that.  
5 So I think if I don't have a pay stub for Noe  
6 Rios in 2018, it's because in the payroll summaries  
7 that Roberto provided for the payroll, he was not  
8 there.  
9 Q Okay. And did -- during your time in providing OLS  
10 with records during the investigation, do you recall  
11 if there were any records that would show employees  
12 authorizing the deductions that we discussed earlier?  
13 A I didn't see any paperwork for -- from employees in  
14 writing authorizing the deductions.  
15 Q Okay. So did you keep any records on behalf of Baja?  
16 For example, does Mercedes Accounting house any  
17 records on behalf of Baja?  
18 A The ones that were provided to me by Roberto for the  
19 processing payroll, those are the documents that I  
20 have.  
21 Q Okay.  
22 A And they mail me -- they email me the copy of -- I  
23 wasn't in the loop of the emails for the receivables.  
24 Because who would put the receivables in the  
25 accounting system for the accounting. But we did not

Page 133

1 invoice. We were not invoicing. That's Roberto Soto  
2 and Claudia's department.  
3 Q Okay. Did you keep, on behalf of Baja, any records  
4 documenting the following, and I have a list. So did  
5 you keep any records on behalf of Baja documenting  
6 each employee's name?  
7 A Yeah, I have the employee's name.  
8 Q Okay. And what about each employee's address?  
9 A Also we have the address.  
10 Q And what about total overtime earnings?  
11 A Total overtime earnings?  
12 Q Correct.  
13 A Roberto was reporting in the payroll summaries all the  
14 information. He would put there the overtime. He  
15 would put in the payroll summaries overtime and then  
16 that employee will have overtime.  
17 Q So you have a record somewhere for each employee's  
18 overtime earnings?  
19 A Not somewhere. In the payroll summaries that Roberto  
20 will give us, they will show you overtime, if there  
21 was overtime.  
22 But remember, two systems. It started with the  
23 system that -- the piecemeal and the amount net that  
24 they would receive or they would not work. And then  
25 later it was switched to the regular hourly rate and

7/31/2020 email correspondence  
from Mercedes De Armas  
to OLS' Ashley Harrison and Daron Williams

**EXHIBIT D**  
**TO DECLARATION OF LORNA S. SYLVESTER**

**From:** [Mercedes De Armas](#)  
**To:** [Harrison, Ashley](#)  
**Cc:** [Williams, Daron](#)  
**Subject:** FW: Baja Concrete USA - Seattle Labor Standards Investigation  
**Date:** Friday, July 31, 2020 4:53:57 PM  
**Attachments:** [image001.png](#)  
[image003.png](#)  
[BCUSA Employee Information.pdf](#)  
[PR Summary 01012017 to 06122020.xlsx](#)  
[COS Labor Standards CAS202000186.pdf](#)

---

**CAUTION: External Email**

Hi Ashley,

Attached the reports requested:

1. Information Chart of all employees and owners
2. Excel Report per Employee per Pay Period. (2017 to 06/12/2020)
3. Letter Information Request CAS-2020-00186
4. Paystubs for the past 3 years requested on # 7 of Letter of Information on the mail today.

Too big to email.

Please let me know if any question.

*Mercedes De Armas*

**MERCEDES ACCOUNTING & ASSOCIATES LLC**

12360 NE 8th St Suite 150

BELLEVUE, WA 98005

425.747.0953

---

**From:** Harrison, Ashley <Ashley.Harrison@seattle.gov>  
**Sent:** 06/24/2020 10:00 AM  
**To:** Mercedes De Armas <Mercedes@mercedesaccounting.com>  
**Cc:** Williams, Daron <Daron.Williams@seattle.gov>  
**Subject:** RE: Baja Concrete USA - Seattle Labor Standards Investigation

Hello Mercedes,

Thanks for your clarification request. Yes, please provide the requested information about all employees at all locations.

Please note that we are still moving forward with the subpoena, due to multiple missed deadlines. I wish you safe travels.

Sincerely,

Ashley Harrison

Investigator

City of Seattle, [Office of Labor Standards](#)

O: 206-386-1930 | [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov)

*Pronouns: she/her/hers*

---

**From:** Mercedes De Armas <[Mercedes@mercedesaccounting.com](mailto:Mercedes@mercedesaccounting.com)>  
**Sent:** Tuesday, June 23, 2020 5:48 PM  
**To:** Harrison, Ashley <[Ashley.Harrison@seattle.gov](mailto:Ashley.Harrison@seattle.gov)>  
**Cc:** Williams, Daron <[Daron.Williams@seattle.gov](mailto:Daron.Williams@seattle.gov)>  
**Subject:** FW: Baja Concrete USA - Seattle Labor Standards Investigation

**CAUTION: External Email**



Hi Ashley,

I am guessing that even when the questionnaire request only the employees that work in Seattle, I need to provide you with all the work done in all cities?

Please confirm.

*Mercedes De Armas*

**MERCEDES ACCOUNTING & ASSOCIATES LLC**

12360 NE 8th St Suite 150

BELLEVUE, WA 98005

425.747.0953

---

**From:** Harrison, Ashley <[Ashley.Harrison@seattle.gov](mailto:Ashley.Harrison@seattle.gov)>

**Sent:** 06/22/2020 4:20 PM

**To:** Mercedes De Armas <[Mercedes@mercedesaccounting.com](mailto:Mercedes@mercedesaccounting.com)>

**Cc:** Williams, Daron <[Daron.Williams@seattle.gov](mailto:Daron.Williams@seattle.gov)>

**Subject:** RE: Baja Concrete USA - Seattle Labor Standards Investigation

Hello Mercedes,

I am writing because you missed the previous deadline of June 11th without letting us know in advance that you could not meet that deadline, and then you requested a new due date of June 18, 2020 (which we granted as a final extension) which has now also passed. We have yet to receive anything from you, even though this information was originally due on June 1, 2020. Please note that we will be sending a subpoena for the outstanding information.

Sincerely,

Ashley Harrison

Investigator

City of Seattle, [Office of Labor Standards](#)

O: 206-386-1930 | [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov)

*Pronouns: she/her/hers*

---

**From:** Harrison, Ashley

**Sent:** Monday, June 15, 2020 11:59 AM

**To:** Mercedes De Armas <[Mercedes@mercedesaccounting.com](mailto:Mercedes@mercedesaccounting.com)>

**Cc:** Williams, Daron <[Daron.Williams@seattle.gov](mailto:Daron.Williams@seattle.gov)>

**Subject:** RE: Baja Concrete USA - Seattle Labor Standards Investigation

Hello Mercedes,

Thank you for this update. It is important to note that if you cannot meet a deadline set by OLS, you must contact us to discuss an adjustment before the deadline, not after.

In this instance, we will accept your proposal of Thursday, June 18<sup>th</sup> by 5:00 PM as a final deadline for this information. Please make sure that the response includes all of the requested information.

Sincerely,

Ashley Harrison

Investigator

City of Seattle, [Office of Labor Standards](#)

O: 206-386-1930 | [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov)

[Facebook](#) | [Twitter](#)

*Pronouns: she/her/hers*

**Stay up to date with COVID-19 updates and public health**

- [City of Seattle Community Resources](#)

- [Public Health: Seattle & King County](#)

This communication is for information only and is not to provide legal advice, create an agency decision, or establish an attorney-client relationship between OLS and the recipient. Any responses to specific questions are based on the facts as we understand them, and are not intended to apply to any other situations. If you need legal advice, please consult an attorney. This message is subject to disclosure according to the Washington Public Records Act (RCW 42.56)

---

**From:** Mercedes De Armas <[Mercedes@mercedesaccounting.com](mailto:Mercedes@mercedesaccounting.com)>  
**Sent:** Monday, June 15, 2020 9:34 AM  
**To:** Harrison, Ashley <[Ashley.Harrison@seattle.gov](mailto:Ashley.Harrison@seattle.gov)>  
**Cc:** Williams, Daron <[Daron.Williams@seattle.gov](mailto:Daron.Williams@seattle.gov)>  
**Subject:** FW: Baja Concrete USA - Seattle Labor Standards Investigation

**CAUTION: External Email**

Hi Ashley.

I am back at the office tomorrow. We started working on the reports requested last week and we will be able to email you all the documents no later than this Thursday by 5pm.

Thank you for your help on this matter.

*Mercedes De Armas*

**MERCEDES ACCOUNTING & ASSOCIATES LLC**

12360 NE 8th St Suite 150

BELLEVUE, WA 98005

425.747.0953

---

**From:** Harrison, Ashley <[Ashley.Harrison@seattle.gov](mailto:Ashley.Harrison@seattle.gov)>  
**Sent:** 06/01/2020 2:10 PM  
**To:** Mercedes De Armas <[Mercedes@mercedesaccounting.com](mailto:Mercedes@mercedesaccounting.com)>  
**Cc:** Williams, Daron <[Daron.Williams@seattle.gov](mailto:Daron.Williams@seattle.gov)>  
**Subject:** RE: Baja Concrete USA - Seattle Labor Standards Investigation

Good afternoon, Mercedes:

Thanks for your email acknowledging receipt of the Notice of Investigation and related documents. I hope that this finds you safe and well, and it's good to hear that your staff can return soon.

Going forward, please copy my co-investigator Daron Williams ([Daron.Williams@seattle.gov](mailto:Daron.Williams@seattle.gov), cc'd here) on any emails related to this matter. He is also listed in the Notice of Investigation you received.

I can grant an extension to 5:00 PM on Thursday, June 11<sup>th</sup> based on when the mailed documents reached you. I've made note that you are responding on behalf of Baja Concrete USA Corp.; we will deliver any future documents to you electronically at this address.

I'd also like to note that named parties are not removed upon request, and we do not intend to modify the Notice of Investigation at this time. If we determine in the course of the investigation that a respondent does not need to be listed, we will remove them when appropriate.

Should you have further questions, please let me know.

Sincerely,

Ashley Harrison

Investigator

City of Seattle, [Office of Labor Standards](#)

O: 206-386-1930 | [ashley.harrison@seattle.gov](mailto:ashley.harrison@seattle.gov)

[Facebook](#) | [Twitter](#)

*Pronouns: she/her/hers*

**Stay up to date with COVID-19 updates and public health**

- [City of Seattle Community Resources](#)
- [Public Health: Seattle & King County](#)

This communication is for information only and is not to provide legal advice, create an agency decision, or establish an attorney-client relationship between OLS and the recipient. Any responses to specific questions are based on the facts as we understand them, and are not intended to apply to any other situations. If you need legal advice, please consult an attorney. This message is subject to disclosure according to the Washington Public Records Act (RCW 42.56)

**From:** Mercedes De Armas <[Mercedes@mercedesaccounting.com](mailto:Mercedes@mercedesaccounting.com)>

**Sent:** Monday, June 1, 2020 1:23 PM

**To:** Harrison, Ashley <[Ashley.Harrison@seattle.gov](mailto:Ashley.Harrison@seattle.gov)>

**Subject:** Baja Concrete USA - Seattle Labor Standards Investigation

**CAUTION: External Email**

Hi Ashley,

We received your letter Thursday last week and notice today that deadline for the questionnaire is June 1<sup>st</sup>, 2020. The letter is address to Roberto Contreras who we do not know who he is, and Carlos Penunuri is not part of the Corporation neither. The only correct name is Claudia Penunuri and letter should be address to her. The address on the letter is correct.

Should I expect a new letter with the corrections made?. Today is my day off and I will not be available. My schedule is booked a week in advance and I will be able to start working on the documents requested for the investigation Tuesday next week.

My business has been very much affected by COVID19 and the good news is that the rest of my staff is coming back to work this week.

Thank you!

*Mercedes De Armas*

**MERCEDES ACCOUNTING & ASSOCIATES LLC**

12360 NE 8th St Suite 150

BELLEVUE, WA 98005

425.747.0953

12/7/2020 email correspondence  
from Mercedes De Armas  
to OLS' Ashley Harrison and Daron Williams

**EXHIBIT E**  
**TO DECLARATION OF LORNA S. SYLVESTER**

**From:** [Mercedes De Armas](#)  
**To:** [Williams, Daron](#)  
**Cc:** [Harrison, Ashley](#)  
**Subject:** FW: BCUSAC Interview  
**Date:** Monday, December 7, 2020 2:12:32 PM  
**Attachments:** [BCUSA Deductions and Contributions Detail.pdf](#)  
[Baja Concrete LTD Canada INVOICE 055.pdf](#)

---

CAUTION: External Email

Daron,  
Following answers to your questions:

1.- Per attached Report you can see deductions are either payroll advances or personal items purchased by the company credit card and deducted in the employee paycheck per their request. Some employees run out of funds and request the supervisor personal help with shoes, flight tickets, etc and the supervisor is using the company credit card for this type of payroll advances. We do not have any complaints from any employee regarding the deductions. The use of the company credit card to purchase items for employees is discontinued. Currently the company is giving Payroll advances and Loans to employees if they qualify. Company policy does not include benefits for any living costs.

2.- There are no paystubs for Antonio Machado since the company started business. He is not an employee of the company.

3.- Roberto Soto works for a Canadian Company name Baja Concrete LTD. Attached an Invoice. Roberto Soto is not an employee of Baja Concrete USA.

I had to work over the weekend to make sure I search all documents.

Please let me know if any questions,

Mercedes De Armas  
MERCEDES ACCOUNTING & ASSOCIATES LLC  
12360 NE 8th St Suite 150  
BELLEVUE, WA 98005  
425.747.0953

-----Original Message-----

From: Williams, Daron <Daron.Williams@seattle.gov>  
Sent: 11/17/2020 5:38 PM  
To: Mercedes De Armas <Mercedes@mercedesaccounting.com>  
Cc: Harrison, Ashley <Ashley.Harrison@seattle.gov>  
Subject: RE: BCUSAC Interview

Hello Mercedes,

We were looking to interview you today, per my last e-mail, but did not hear from you. We still have some questions (and document requests) we would like you to answer. Instead of trying to coordinate an interview please just answer the following questions below and submit the requested items.

1. We noticed several different types of deductions on employees paystubs from 2017-2020. Do you have any

signed deduction authorization forms from employees giving you authorization to make those deductions? If so, please submit them.

2. Please submit any records of payments (paystubs) made to Antonio Machado from 2017-2020.

3. You mentioned that Robert Soto Contreras was an independent contractor in the documents you provided. Please submit documents relating to Mr. Contreras Independent Contractor status (for example W-9 documents and/or written contracts).

4. Also please provide records of payments (paystubs) made to Roberto Soto Contreras.

Submit this information by November 24th. If you do not respond to the questions and produce the information by the deadline of November 24th, we will move forward with our investigation and take it as you have chosen not to answer the questions or submit the information requested.

If you have any questions about this e-mail please let us know ASAP.

Thanks,

Daron Williams  
Senior Investigator  
City of Seattle | Office of Labor Standards  
810 Third Avenue, Suite 375  
Seattle, WA 98104-1627  
206-733-9969  
Daron.Williams@seattle.gov

-----Original Message-----

From: Williams, Daron  
Sent: Thursday, November 12, 2020 12:43 PM  
To: Mercedes De Armas <Mercedes@mercedesaccounting.com>  
Cc: Harrison, Ashley <Ashley.Harrison@seattle.gov>  
Subject: RE: BCUSAC Interview

Hello Mercedes,

All is well with us, thanks for asking. I hope all is well with and your family as well.

Per your email on 9/30 stating "let's coordinate the telephone conference date next week," we e-mailed the very next week on 10/7 to help set-up the date, but did not hear from you. However, if you are ready to interview now that works for us. Does Tuesday (11/17) at either 11:15am or 3pm work for you? Please let us know ASAP and we can calendar that and send an invite.

Hope to hear from you soon.

Thanks,

Daron Williams  
Senior Investigator  
City of Seattle | Office of Labor Standards  
810 Third Avenue, Suite 375  
Seattle, WA 98104-1627  
206-733-9969  
Daron.Williams@seattle.gov

-----Original Message-----

From: Mercedes De Armas <Mercedes@mercedesaccounting.com>  
Sent: Thursday, November 12, 2020 11:58 AM  
To: Williams, Daron <Daron.Williams@seattle.gov>  
Cc: Harrison, Ashley <Ashley.Harrison@seattle.gov>  
Subject: FW: BCUSAC Interview

CAUTION: External Email

Hi Daron, Ashley,

I am ready for the interview if it is still necessary. I can also answer any question for Claudia Penunuri. She is currently traveling or you can email her.

As you know I requested this interview after Oct 15th. Due to my brother passing away by the end of October, I have not been available and I have not received correspondence from you or Ashley and also no phone calls.

Hope you are all safe and well.

Thank you for your understanding!

Mercedes De Armas  
MERCEDES ACCOUNTING & ASSOCIATES LLC  
12360 NE 8th St Suite 150  
BELLEVUE, WA 98005  
425.747.0953

-----Original Message-----

From: Williams, Daron <Daron.Williams@seattle.gov>  
Sent: 10/07/2020 5:14 PM  
To: Mercedes De Armas <Mercedes@mercedesaccounting.com>  
Cc: Harrison, Ashley <Ashley.Harrison@seattle.gov>  
Subject: RE: BCUSAC Document Requested for 10/01/2020

Hello Mercedes,

I'm just following up from my previous e-mail regarding scheduling an interview with you. Do you have some availability on October 12th or 13th?

This interview should take about one hour, but it could go a little longer depending on any follow-up questions we may have. If feasible, we can conduct this interview via webex video chat or it could be done via a conference call for which we can supply the call-in number.

Please let us know by October 9th (Friday), thanks.

Daron Williams  
Senior Investigator  
City of Seattle | Office of Labor Standards  
810 Third Avenue, Suite 375  
Seattle, WA 98104-1627  
206-733-9969  
Daron.Williams@seattle.gov

-----Original Message-----

From: Williams, Daron

Sent: Thursday, October 01, 2020 3:33 PM  
To: 'Mercedes De Armas' <Mercedes@mercedesaccounting.com>  
Cc: Harrison, Ashley <Ashley.Harrison@seattle.gov>  
Subject: RE: BCUSAC Document Requested for 10/01/2020

Hello Mercedes,

Thank you for providing this information, we will be in touch next week to coordinate a time to interview.

Thanks,

Daron Williams  
Senior Investigator  
City of Seattle | Office of Labor Standards  
810 Third Avenue, Suite 375  
Seattle, WA 98104-1627  
206-733-9969  
Daron.Williams@seattle.gov

-----Original Message-----

From: Mercedes De Armas <Mercedes@mercedesaccounting.com>  
Sent: Thursday, October 01, 2020 11:10 AM  
To: Williams, Daron <Daron.Williams@seattle.gov>  
Cc: Harrison, Ashley <Ashley.Harrison@seattle.gov>  
Subject: FW: BCUSAC Document Requested for 10/01/2020

CAUTION: External Email

Daron,  
Attached the information requested

Mercedes De Armas  
MERCEDES ACCOUNTING & ASSOCIATES LLC  
12360 NE 8th St Suite 150  
BELLEVUE, WA 98005  
425.747.0953

-----Original Message-----

From: Payroll <Payroll@mercedesaccounting.com>  
Sent: 09/30/2020 4:07 PM  
To: Mercedes De Armas <Mercedes@mercedesaccounting.com>  
Subject: BCUSAC Document Requested for 10/01/2020

Mercedes,

Attached you will find the information requested from Seattle Department of Labor.

Information attached from the dates requested :

06/13/2020 to 09/01/2020

3 files with the Payroll Summaries



4 files with the Paystubs. Note: Month of July was divided on 2 files: 1st file from 07/01 to 07/21 and 2nd file 07/31/2020.

If you have any questions please let me know.

Saludos cordiales,

Payroll Department  
Mercedes Accounting & Associates LLC  
12360 NE 8th ST Suite 150  
Bellevue WA 98005  
Ph (425)7470953  
Fax (425)7474481