

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

**In the matter of the Appeal of:** ) Hearing Examiner File:  
 ) **No.: LS-21-002**  
**BAJA CONCRETE USA CORP., ROBERTO** ) **LS-21-003**  
**CONTRERAS, NEWWAY FORMING INC.,** ) **LS-21-004**  
**and ANTONIO MACHADO** )  
 ) DECLARATION OF CINDI WILLIAMS IN  
from a Final Order of the Decision issued by ) SUPPORT OF RESPONDENT CITY OF  
the Director, Seattle Office of Labor Standards ) SEATTLE'S RESPONSE TO APPELLANT  
 ) MACHADO'S MOTION FOR SUMMARY  
 ) JUDGMENT

I, Cindi Williams, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

1. I am the Assistant City Attorney appearing for Respondents, the City of Seattle, the Seattle Office of Labor Standards, in the above-captioned matter. I am over the age of 18 and make this declaration based on personal knowledge. I am competent to testify as to the matters stated below.
2. The attached documents are true and correct copies of the following:
  - a. A relevant excerpt from the transcript of the Deposition of Mercedes de Armas, individually, taken on Wednesday, May 11, 2022. This document is attached as **Exhibit A**.

Signed this 2<sup>nd</sup> day of August, 2022, in Seattle, Washington.

/s/ Cindi Williams  
CINDI WILLIAMS

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

**EXHIBIT A**  
**TO DECLARATION OF CINDI WILLIAMS**

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

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

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| <p style="text-align: right;">Page 6</p> <p>1 EXAMINATION</p> <p>2 BY MS. SYLVESTER:</p> <p>3 Q Good morning, Ms. De Armas.</p> <p>4 My name is Lorna Staten Sylvester, and I</p> <p>5 represent the City, along with Ms. Erica Franklin, who</p> <p>6 conducted the deposition of you before.</p> <p>7 MR. LARKIN: Sorry.</p> <p>8 Are we waiting for someone from Newway?</p> <p>9 MS. SYLVESTER: We have --</p> <p>10 MS. WOLFE: I'm here, Alex. My</p> <p>11 video is just not working today.</p> <p>12 MR. LARKIN: Oh, okay. Sorry.</p> <p>13 MS. WOLFE: Yeah.</p> <p>14 MR. LARKIN: Sorry.</p> <p>15 Q (By Ms. Sylvester) Okay. So if you can state your</p> <p>16 name and spell your name for the record, please.</p> <p>17 A Mercedes De Armas. M-e-r-c-e-d-e-s, capital D-e,</p> <p>18 space A-r-m-a-s.</p> <p>19 Q Okay. And can you state your business address for the</p> <p>20 record as well.</p> <p>21 A Okay. I'm a little bit confused because I'm here as</p> <p>22 Mercedes De Armas, and my understanding is that I'm</p> <p>23 personally here, which I -- Mercedes De Armas has no</p> <p>24 business with Baja or this deal. So I don't know why</p> <p>25 I was subpoenaed.</p> | <p style="text-align: right;">Page 7</p> <p>1 Q Okay. Ms. De Armas, we're going to get to that.</p> <p>2 If you could state your business address for the</p> <p>3 record.</p> <p>4 A You mean Mercedes Accounting?</p> <p>5 Q Correct, your business address.</p> <p>6 A Mercedes Accounting &amp; Associates is now located at</p> <p>7 12727 Northup Way, Suite 7, in Bellevue, Washington</p> <p>8 98005.</p> <p>9 Q Okay. Thank you.</p> <p>10 So we're here to take your deposition In The</p> <p>11 Matter of the Appeal of Baja Concrete USA, Roberto</p> <p>12 Contreras, Newway Forming Inc., and Antonio Machado.</p> <p>13 The Hearing Examiner Case Nos. are LS-21-002,</p> <p>14 LS-21-003, and LS-21-004.</p> <p>15 We're here to find out everything that you know</p> <p>16 about these claims that Baja, Newway, and</p> <p>17 Mr. Contreras and Mr. Machado failed to pay wages for</p> <p>18 all hours worked, including overtime, and failed to</p> <p>19 provide sick and safe time in violation of SMC 1416,</p> <p>20 1419, and 1420, beginning in February of 2018 to</p> <p>21 August of 2020.</p> <p>22 So today is there anything such as stress,</p> <p>23 physical or mental conditions, or being under the</p> <p>24 influence of any substances that would prevent you</p> <p>25 from answering truthfully today?</p>                                                                    |
| <p style="text-align: right;">Page 8</p> <p>1 A No.</p> <p>2 But I just need to say that now I have more</p> <p>3 experience. It will be a better deposition from last</p> <p>4 time because now I know what I'm doing better.</p> <p>5 Q Okay. Great.</p> <p>6 So we've already heard this, but is there -- for</p> <p>7 the record, is there anyone in the room with you?</p> <p>8 A No. Just Mr. -- Alex.</p> <p>9 Q Mr. Larkin?</p> <p>10 A Yeah.</p> <p>11 Q Okay. And there are a couple of rules that you may</p> <p>12 recall. We went over some rules the last time that</p> <p>13 you were deposed. So I would just like to go through</p> <p>14 those again.</p> <p>15 First, you're required to give full, nonevasive</p> <p>16 truthful answers.</p> <p>17 You understand that?</p> <p>18 A Yes.</p> <p>19 Q Okay. And if you could answer verbally because</p> <p>20 shaking your head or nodding won't be picked up on the</p> <p>21 record. So if you could just answer verbally.</p> <p>22 Instead of saying "uh-huh" or "huh-uh," if you could</p> <p>23 say "yes" or "no."</p> <p>24 A Okay.</p> <p>25 Q Okay. Also, we can take breaks if you need a break.</p>                       | <p style="text-align: right;">Page 9</p> <p>1 However, if there is a pending question, we would ask</p> <p>2 that you answer the question prior to any breaks?</p> <p>3 A Understood.</p> <p>4 Q Okay. And if I refer to the relevant time period, I'm</p> <p>5 referring to February of 2018 to August of 2020.</p> <p>6 Okay?</p> <p>7 A Okay.</p> <p>8 Q Okay. And also if I refer to Baja generally, I'm</p> <p>9 talking about Baja Concrete USA, but I may refer to</p> <p>10 Baja Ltd., which is the one that is in Canada, but I</p> <p>11 will specify that. But generally, if I just say just</p> <p>12 "Baja," I'm talking about Baja Concrete USA.</p> <p>13 A Okay.</p> <p>14 Q Okay. And lastly, even though you're testifying today</p> <p>15 as Mercedes De Armas, I would ask that you answer my</p> <p>16 question if you can, unless it falls under some sort</p> <p>17 of privilege. So if you know the answer, regardless</p> <p>18 of how you came to know the answer, I would ask that</p> <p>19 you answer my question.</p> <p>20 If you don't know, it's fine to say "I don't</p> <p>21 know." Or if you need clarification, it's fine to say</p> <p>22 that you need clarification. Okay?</p> <p>23 A You mean, Ms. Lorna, that if I know the answer because</p> <p>24 I met with someone and I know it through the other</p> <p>25 person, when I answer, I should say I met with someone</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 46</p> <p>1 workers each month?</p> <p>2 <b>A What -- could you repeat the question?</b></p> <p>3 Q Yes.</p> <p>4 8 percent.</p> <p>5 <b>A What do you mean? A percent of what?</b></p> <p>6 Q 8, as in ocho.</p> <p>7 <b>A Ocho.</b></p> <p>8 Q Percent.</p> <p>9 <b>A Could you repeat the question? That if I know -- the</b></p> <p>10 <b>whole question.</b></p> <p>11 Q Okay. Do you know whether Mr. Machado was supposed to</p> <p>12 get 8 percent of the amount paid to workers each</p> <p>13 month?</p> <p>14 <b>A No, not at all. I was told this is a check that was</b></p> <p>15 <b>requested by Claudia, and it was a loan, a loan</b></p> <p>16 <b>payment. She was out of the country. It was a loan</b></p> <p>17 <b>payment. And I learned later that that loan was an</b></p> <p>18 <b>agreement and was given in Canada to Carlos.</b></p> <p>19 Q Okay. So now on the memo line, it says "Receipts</p> <p>20 pending."</p> <p>21 Did you ever receive a receipt for the payment?</p> <p>22 <b>A No. The person who processed this check in the</b></p> <p>23 <b>payroll didn't know and didn't have anything. Just</b></p> <p>24 <b>somebody. And then she put that memo, thinking maybe</b></p> <p>25 <b>there is a document or something for this. And that's</b></p>                                                                         | <p style="text-align: right;">Page 47</p> <p>1 <b>why she put the receipt pending, just to know that she</b></p> <p>2 <b>was elaborated this, you know, because somebody asked</b></p> <p>3 <b>her. And it was Claudia.</b></p> <p>4 Q Okay. So if there was a receipt pending, did you or</p> <p>5 Mercedes Accounting ever follow up on it to get a</p> <p>6 receipt?</p> <p>7 <b>A No, because Claudia told me that that was the loan --</b></p> <p>8 <b>a loan that he gave to Carlos in Canada, and he was</b></p> <p>9 <b>getting paid.</b></p> <p>10 Q Okay. So Mr. Machado made a loan to Baja Concrete</p> <p>11 Ltd. in Canada?</p> <p>12 <b>A I don't know if it was Baja Concrete Ltd. I don't</b></p> <p>13 <b>know. I don't know anything about that agreement with</b></p> <p>14 <b>that loan. But I know the information that I have is</b></p> <p>15 <b>that Antonio Machado gave a loan to ...</b></p> <p>16 Q To whom?</p> <p>17 <b>A I say Carlos because Carlos is the one in Canada.</b></p> <p>18 <b>Now, how the documents are, I never seen anything from</b></p> <p>19 <b>Canada --</b></p> <p>20 Q Okay.</p> <p>21 <b>A -- related to -- you know, I never seen anything. The</b></p> <p>22 <b>only thing I've seen is invoices from Ltd. to Baja</b></p> <p>23 <b>Concrete USA.</b></p> <p>24 Q Okay. And so how do we know -- how did you know the</p> <p>25 amount to be paid without a receipt?</p>  |
| <p style="text-align: right;">Page 48</p> <p>1 <b>A Because Claudia requested that amount.</b></p> <p>2 Q Okay. So Claudia directed you, Mercedes Accounting,</p> <p>3 to give a check to -- or process a check to Antonio</p> <p>4 Machado for this amount?</p> <p>5 <b>A Yes. And it was a loan payment.</b></p> <p>6 Q So is her authorization in writing somewhere?</p> <p>7 <b>A It may be. I would need to search the records.</b></p> <p>8 Q Okay.</p> <p>9 <b>A It may be that there is an email for this. It may be,</b></p> <p>10 <b>yeah. But I don't have -- I don't recall right now,</b></p> <p>11 <b>but I can search the records for sure.</b></p> <p>12 Q Okay. So if there is authorization in writing</p> <p>13 somewhere -- and that was not provided to OLS?</p> <p>14 <b>A Could you say that again, Ms. Lorna?</b></p> <p>15 Q Yes. Certainly.</p> <p>16 If there is authorization somewhere in writing,</p> <p>17 that authorization was not provided to the Office of</p> <p>18 Labor Standards; is that right?</p> <p>19 <b>A Well, I don't remember everything that I was provided</b></p> <p>20 <b>to the Office of Labor Standards. Everything -- I</b></p> <p>21 <b>will need to go through everything that I gave to the</b></p> <p>22 <b>Office of Labor Standards.</b></p> <p>23 MS. SYLVESTER: Okay. Does anybody</p> <p>24 node a break?</p> <p>25 MR. LARKIN: Yep.</p> | <p style="text-align: right;">Page 49</p> <p>1 <b>THE WITNESS: Yes, we do.</b></p> <p>2 MS. SYLVESTER: Let's see. It's</p> <p>3 10:21. What about 10 minutes.</p> <p>4 <b>THE WITNESS: That's great.</b></p> <p>5 (Recess from 10:22 a.m. to</p> <p>6 10:33 a.m.)</p> <p>7 Q (By Ms. Sylvester) Mercedes, can you tell me, how did</p> <p>8 you know that Roberto used the time sheets and/or time</p> <p>9 cards to prepare the payroll summary? Can you discuss</p> <p>10 that a little bit?</p> <p>11 <b>A I'm thinking. I really don't know if he prepared</b></p> <p>12 <b>those time sheets because now I know that there are no</b></p> <p>13 <b>time cards, just time sheets. And -- but in the</b></p> <p>14 <b>invoice, he was attaching -- you know, in the last</b></p> <p>15 <b>deposition, they really showed clearly, and it is</b></p> <p>16 <b>true, the invoices had that kind of time sheet in the</b></p> <p>17 <b>back.</b></p> <p>18 <b>And the time sheet were approved by a Newway</b></p> <p>19 <b>Forming -- a Newway Forming project manager or</b></p> <p>20 <b>somebody from Newway Forming. And I know that because</b></p> <p>21 <b>Newway Forming will not pay them unless it was</b></p> <p>22 <b>approved by somebody there. And that is, I believe,</b></p> <p>23 <b>the same time sheet.</b></p> <p>24 Q The same time sheet that Roberto was using to get his</p> <p>25 payroll summaries?</p> |