

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.,) **LS-21-003**
ROBERTO CONTRERAS, NEWWAY) **LS-21-004**
FORMING INC., and ANTONIO)
MACHADO) DECLARATION OF LORNA S.
) SYLVESTER IN SUPPORT OF
) RESPONDENT CITY OF SEATTLE'S
from a Final Order of the Decision issued by) RESPONSE TO APPELLANT NEWWAY
the Director, Seattle Office of Labor Standards) FORMING, INC.'S MOTION FOR
) SUMMARY JUDGMENT

I, Lorna S. Sylvester, 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 one of the Assistant City Attorneys appearing for Respondents, the City of Seattle and the Seattle Office of Labor Standards ("OLS"), 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. Relevant excerpts from the transcript of the Deposition of Antonio Machado, taken on Tuesday, February 1, 2022. This document is attached as **Exhibit A**.
 - b. Relevant excerpts from the transcript of the Deposition of Kwynne Forler-Grant on behalf of Newway Forming, Inc. pursuant to CR 30(b)(6), taken on Thursday, May 5, 2022. This document is attached as **Exhibit B**.
 - c. 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 C**.

- 1 d. Interview Statement of Antonio Machado, dated October 23, 2020. This document is
2 attached as **Exhibit D**.
3 e. Relevant excerpts from the transcript of the Deposition of Daron Williams, on behalf
4 of the Office of Labor Standards pursuant to CR 30(b)(6), taken on Thursday, April
5 28, 2022. This document is attached as **Exhibit E**.

6 Signed this 3rd day of August, 2022, in Kent, Washington.

7 /s/ Lorna S. Sylvester
8 LORNA S. SYLVESTER
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2/1/2022 Deposition Excerpts:
Antonio Machado

EXHIBIT A
TO DECLARATION OF LORNA S. SYLVESTER

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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

Videotaped Deposition Upon Oral Examination
of
ANTONIO MACHADO

Taken at Remotely via Zoom

DATE: Tuesday, February 1, 2022

REPORTED BY: Jamie Booker, RPR, CCR 3281

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<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 For Respondent City of Seattle:</p> <p>4 JEREMIAH MILLER</p> <p>5 ERICA R. FRANKLIN</p> <p>6 SEATTLE CITY ATTORNEY</p> <p>7 701 Fifth Avenue, Suite 2050</p> <p>8 Seattle, WA 98104-7095</p> <p>9 jeremiah.miller@seattle.gov</p> <p>10 erica.franklin@seattle.gov</p> <p>11</p> <p>12 For Appellant Newway Forming, Inc.:</p> <p>13 JASON R. WANDLER</p> <p>14 OLES MORRISON RINKER & BAKER LLP</p> <p>15 701 Pike Street, Suite 1700</p> <p>16 Seattle, WA 98101</p> <p>17 wandler@oles.com</p> <p>18</p> <p>19 For Appellant Baja Concrete:</p> <p>20 ALEX T. LARKIN</p> <p>21 MDK LAW</p> <p>22 777 108th Ave NE, Suite 2000</p> <p>23 Bellevue, WA 98004</p> <p>24 Alarkin@mdklaw.com</p> <p>25</p> <p>19 For Appellant Antonio Machado:</p> <p>20 SARA KINCAID</p> <p>21 ROCKE LAW GROUP, PLLC</p> <p>22 101 Yesler Way, Suite 603</p> <p>23 Seattle, WA 98104</p> <p>24 sara@rockelaw.com</p> <p>25</p> <p>Also Present: CLAUDIA PENUNURI</p>	<p>1 I N D E X</p> <p>2 EXAMINATION BY: PAGE</p> <p>3</p> <p>4 ERICA FRANKLIN 6</p> <p>5 SARA KINCAID 40</p> <p>6 ERICA FRANKLIN 41</p> <p>7 ALEX LARKIN 126</p> <p>8 SARA KINCAID 163</p> <p>9 * * *</p> <p>10 EXHIBIT DESCRIPTION FOR I.D.</p> <p>11</p> <p>12 Exhibit 1 APPBAJA 0386-0400 89</p> <p>13 Exhibit 2 APPBAJA0002 97</p> <p>14 Exhibit 3 Alejandro Fiol 97</p> <p>15 Exhibit 4 APPBAJA0003 98</p> <p>16 Exhibit 5 BCUSA Employee Information 101</p> <p>17 (APPBAJA0004-0007)</p> <p>18 Exhibit 6 BCUSA PR Summ 061320 to 063020 105</p> <p>19 (APPBAJA0131)</p> <p>20 Exhibit 7 Check to Antonio Machado 118</p> <p>21 Exhibit 8 Time Cards 1 Machado Dep 136</p> <p>22 Exhibit 9 Time Cards 2 Machado Dep 137</p> <p>23 Exhibit 10 OLS Letter to Newway Machado 138</p> <p>24 Dep</p> <p>25 Exhibit 11 Safety Stand Down Machado Dep 141</p> <p>Exhibit 12 Newway Org Chart Machado Dep 157</p>
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<p>1 REMOTELY VIA ZOOM; TUESDAY, FEBRUARY 1, 2022</p> <p>2 9:00 A.M.</p> <p>3 --oOo--</p> <p>4</p> <p>5 VIDEOGRAPHER: Good morning. We are now on the</p> <p>6 record. The time now is 9:03 a.m. on Tuesday, February 1,</p> <p>7 2022.</p> <p>8 This is Volume I, Media Unit I of the</p> <p>9 video-recorded deposition of Antonio Machado in the matter</p> <p>10 of the Appeal of Baja Concrete USA Corporation, Roberto</p> <p>11 Contreras, Newway Forming Incorporated, and Antonio</p> <p>12 Machado from a final order of the decision issued by the</p> <p>13 Director Seattle Office of the Labor Standards. The case</p> <p>14 number -- the case number is LS-21-004.</p> <p>15 This deposition is being held via Zoom. My name</p> <p>16 is Allison Borgida. I am the videographer today from B&A</p> <p>17 Litigation Services. The court reporter is Jamie Booker,</p> <p>18 also from B&A Litigation Services.</p> <p>19 Will counsel and all present please note their</p> <p>20 appearances and affiliations for the record, and then the</p> <p>21 court reporter may swear in the witness.</p> <p>22 ERICA FRANKLIN: Good morning. Erica Franklin</p> <p>23 for the City of Seattle.</p> <p>24 JEREMIAH MILLER: Jeremiah Miller for the City</p> <p>25 of Seattle.</p>	<p>1 SARA KINCAID: Good morning. This is Sara</p> <p>2 Kincaid.</p> <p>3 JASON WANDLER: Sorry.</p> <p>4 VIDEOGRAPHER: Go ahead, Jason --</p> <p>5 JASON WANDLER: Jason Wandler her for Newway</p> <p>6 Forming.</p> <p>7 ALEX LARKIN: And Alex Larkin for Baja Concrete</p> <p>8 USA Corp.</p> <p>9 VIDEOGRAPHER: And, Sara, you might want to say</p> <p>10 yours again just because he was the same time.</p> <p>11 SARA KINCAID: Yeah. Sorry. I didn't want to</p> <p>12 interrupt anybody again.</p> <p>13 This is Sara Kincaid for Antonio Machado.</p> <p>14 VIDEOGRAPHER: All right.</p> <p>15 Jamie.</p> <p>16 COURT REPORTER: We have someone named Claudia.</p> <p>17 VIDEOGRAPHER: Oh, yep.</p> <p>18 Claudia, if you could just introduce yourself</p> <p>19 for the record. Or if someone wants to introduce her.</p> <p>20 ALEX LARKIN: Claudia Penunuri. She's the --</p> <p>21 the governor or the owner of Baja Concrete USA Corp. A</p> <p>22 member, not the owner. Sorry.</p> <p>23</p> <p>24 ANTONIO MACHADO, deponent herein, being</p> <p>25 first duly sworn on oath,</p>

<p style="text-align: right;">Page 6</p> <p>1 was examined and testified 2 as follows: 3 4 VIDEOGRAPHER: Ms. Franklin, you are muted, just 5 FYI. 6 ERICA FRANKLIN: Sure. So let's get started. 7 8 EXAMINATION 9 BY ERICA FRANKLIN: 10 Q. Good morning. Could you please state your full 11 name and address for the record. 12 VIDEOGRAPHER: Mr. Machado, are you able to hear 13 us? 14 THE WITNESS: Yes. Yes. Go ahead. 15 VIDEOGRAPHER: Okay. 16 BY ERICA FRANKLIN: 17 Q. Mr. Machado, can you please state your full name 18 and address for the record. 19 A. So can you repeat? I -- I can't hear too good. 20 I'm going to turn the volume up a little bit. 21 Q. Thank you. 22 Can you please state -- what is your full name? 23 A. My full name is Antonio Fernando DaSilva 24 Machado. 25 Q. Thank you.</p>	<p style="text-align: right;">Page 7</p> <p>1 ERICA FRANKLIN: Ms. Booker, do you need any of 2 that spelled? 3 COURT REPORTER: Yes. 4 BY ERICA FRANKLIN: 5 Q. Can you go ahead and please spell your first 6 name and your middle names and your last name. 7 A. Okay. My first name is Antonio, my middle name 8 is Fernando, and my last name, it's Machado. 9 COURT REPORTER: I'm sorry, sir. There was 10 another name you said before Machado. 11 THE WITNESS: Oh, you know, us -- you know, 12 Portuguese, we have a little name. It's Antonio Fernando 13 DaSilva Machado. You know, that's my full name. 14 COURT REPORTER: Could you spell that DaSilva, 15 please. 16 THE WITNESS: Can I spell -- spell the -- the 17 whole name is Antonio Fernando DaSilva Machado. 18 COURT REPORTER: Can you spell DaSilva, please. 19 THE WITNESS: Yes. D-a-S-i-l-v-a. 20 COURT REPORTER: Thank you. 21 THE WITNESS: That's my mom's, you know, before 22 she got married; so. 23 BY ERICA FRANKLIN: 24 Q. Thank you, Mr. Machado. 25 My name is Erica Franklin, and I am an attorney</p>
<p style="text-align: right;">Page 8</p> <p>1 for the City of Seattle. And I am here to take your 2 deposition today. 3 A. Okay. 4 Q. Is there any reason, such as stress or a 5 physical or mental condition or the influences of 6 substances that would prevent you from testifying 7 truthfully today? 8 A. I can barely hear you. You know, you broke up. 9 I'm going to turn the volume on again. Okay. 10 You want to try again, please? 11 Q. Is there any reason that would prevent you from 12 telling the truth today such as substance or a physical 13 condition or a mental condition? 14 A. What do you mean by -- is there any reason 15 for -- physical -- physical conditions? That -- that's 16 what you mean? 17 Q. Is there anything today that would make it so 18 you couldn't tell the truth in your deposition? 19 A. I'm -- I'm -- I'm going to tell you nothing but 20 the truth. Any questions you guys asking me, I'll tell 21 you nothing but the truth. 22 Q. Thank you. I appreciate it. 23 And are there others in the room with you today? 24 A. Anybody in the room? No, I'm -- I'm by myself. 25 Q. Thank you.</p>	<p style="text-align: right;">Page 9</p> <p>1 Have you ever been deposed before? 2 A. Where in the police before? 3 Q. Have you ever been in a deposition like this 4 before? 5 A. No. I'm -- 6 Q. -- this your first time? 7 A. I never had any problem with the law or -- 8 never, ever in my life. Never. 9 Q. And so let me just give you a -- a little 10 overview of how a deposition works. 11 A. Okay. 12 Q. So we're here today so that I can find out about 13 what you know about this case. So I am going to ask you 14 questions, and you will need to provide answers to them 15 that are direct and the answer the full question. 16 A. Okay. 17 Q. So, if you will recall, you were put under oath 18 which means that you are required to provide truthful 19 answers to each of my questions. 20 And this -- a deposition is a little bit 21 different than a regular conversation. 22 A. Okay. 23 Q. In a -- in a regular conversation, it's common 24 for people to talk over one another, to interrupt each 25 other.</p>

<p style="text-align: right;">Page 22</p> <p>1 to put a schedule together, you know, for the -- for the 2 whole week for the project. 3 And then, we had a more meetings. You know, we 4 had a more meetings, you know, a lot of times with 5 planning. And then they had an issue. For example, they 6 mention a plumbing inspection. They mention an electrical 7 inspection. Sometimes the rebar -- you know, how do you 8 call -- the detailer will miss something. 9 So then we have to change, you know, the pour -- 10 you know, the pours on the floor or the -- even on the 11 walls. You know, whatever we were doing. If there were 12 issues, then we will move on, go, you know, work in 13 another area. 14 And so then that's when I communicate with my 15 foremans. You know, every time we doing -- we doing a 16 pour, I got to communicate, you know, with a cement finish 17 foreman and with a labor foreman. 18 So, if the morning we going to do a slab, let's 19 say, at 4:00 or 5:00 a.m., so we will call the labor crew, 20 you know, to help the guys pouring the concrete. 21 And then same thing with the carpenters. I will 22 go to the carpenter foreman and let them know we doing the 23 slab tomorrow. After that, we going to do vertical; for 24 example columns, walls, you know. So that -- that's 25 pretty much I was communicate with the foreman, let them</p>	<p style="text-align: right;">Page 23</p> <p>1 know what's going on. 2 And then, as I would walking around, I will make 3 sure, you know, the guys they working safe because it -- 4 then I will get in trouble with the -- you know, with the 5 owner. 6 I got to make sure the guy steps -- you know, 7 stands on top of a ladder. I got to make sure it's, you 8 know, tied off. So everything we do, we got to make 9 sure -- we got to comply, you know, with the safe because 10 our goal -- Newway goal, the most important thing is safe 11 because we want to make sure everybody go home safe, you 12 know, at night. 13 And then, if I see any issues, like guy, you 14 know, do something unsafe, I will call the foreman. And 15 the foreman will talk to him and, you know, show him the 16 proper way to, you know -- you know, to do things. 17 And same thing -- every morning, you know, it's 18 by law. We have to do a little warmup -- you know, little 19 exercise. And there same time, we will have a little talk 20 about safety. 21 You know, my safety guy will keep -- and then we 22 will do a little warmup. And then I will talk to the 23 foremans -- you know, the cement finisher, the -- how do 24 you call -- the labor foreman, the carpenter foreman. 25 Will let them know what are we going to do, you know,</p>
<p style="text-align: right;">Page 24</p> <p>1 during the day. 2 So that's pretty much, you know -- and that was 3 going -- sometimes there is -- you know, like I said 4 sometimes there's little change that the general 5 contractor or the developer will call me. Tom, we going 6 to have a meeting. We got the change, you know, some 7 things because we cannot get them done, you know, on time. 8 So that's pretty much my job. That's what I was 9 doing. 10 Q. Okay. Is there anything else that you -- that 11 you left out? 12 A. No. No. That's pretty much -- you know, pretty 13 much what I was doing. 14 Q. Okay. So where did you spend most of your time? 15 In an office? In a construction site? 16 (Reporter clarification.) 17 ERICA FRANKLIN: Let me repeat the question. 18 Where did you spend you time? For example, in 19 an office or at the construction site? 20 A. 99 percent or 95, it's on a construction site, 21 involved, you know -- you know, with a job. 22 The five percent I will be all -- you know, in a 23 meetings. You know, I spend there 40 years. I will be 24 five percent in a meetings or -- but 95 percent of time, I 25 will be on the job site all the time.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. How much of the -- so let me just back 2 up. 3 The people who were -- who were working -- who 4 were not managers, who were just actually doing the 5 work -- forgive me for my ignorance -- but is that called 6 a line worker? What is that called in your industry? 7 A. Sorry. I -- I -- I missed the story. Can you 8 repeat, please. 9 Q. What's the name of the -- what do you call the 10 worker? Just a person who's -- they report to the 11 foreman. They're -- they're -- they're not a supervisor, 12 just -- just a worker who's -- 13 A. No. I -- I will talk most of -- like I said, 14 there's to my supervisors. 15 But, if I see some -- you know, someone doing 16 something wrong on site, I will stop them. And then, you 17 know, I will call the foreman and so the foreman he could 18 correct him. 19 Q. What if -- if the -- do you ever speak directly 20 to the worker in that case, if you see a worker doing 21 something wrong or dangerous? 22 A. No. I will stop them. I say -- I will tell 23 them, you know, "Hold on till your foreman comes here 24 because this is not safe." Because if he -- anything they 25 do wrong, then I get blamed for it, you know, from that --</p>

<p style="text-align: right;">Page 26</p> <p>1 from the owner, from the developer. So I got to make 2 sure. Like I said, our goal was make sure, you know, 3 everybody goes home at night safe. So we want to make 4 sure everybody work, you know -- obey the law. 5 Q. So if you -- if you saw a problem and you needed 6 to find the foreman, were there every times where you 7 couldn't find the foreman? 8 A. Sorry? The -- 9 Q. Did -- were there ever times where you could not 10 find the foreman? 11 A. Oh, I have -- I contact him with a radio or -- 12 or with a phone. With a telephone or with it -- you know, 13 radio. 14 Q. Okay. And so what would you -- what would you 15 tell the foreman if there was a safety problem, for 16 example? 17 A. If it's a minor thing, I said, "Oh, you know, 18 make sure, you know, this won't happen," because he can 19 lose his job. 20 I mean, Onni -- Onni, some of the guys there -- 21 Onni, they -- they fire them. First you give them a 22 warning, and then the second time they -- you know, they 23 send you home. And the -- depends on where -- on where it 24 is. 25 I mean, I saw guys there, you know, they didn't</p>	<p style="text-align: right;">Page 27</p> <p>1 tied up, for example, a ladder. A wind came, and the 2 ladder came down -- I believe it -- probably 30, 35 3 floors. Can't imagine if that ladder will hit somebody or 4 will be killed. So that guy had hide away -- Onni, they 5 -- they dismiss him. They fired him. They don't want him 6 any longer on the job site. 7 Like I said, every morning, we are a meeting 8 talking about safety. So we cannot tolerate those things 9 because somebody could die. 10 Q. Okay. When you would talk to the person's 11 foreman, would you give the foreman specific instructions 12 about what needed to happen? 13 A. Like, if it's a minor thing, yeah, I will say. 14 But, if it's a bigger thing, then my safety guy, which I 15 had, you know, a -- a guy, you know -- Onni there, they're 16 safe so then he would correct him. And then sometimes 17 even, you know, give him more training. Because every 18 person was then, before we hired, we give them, you know, 19 a -- you know, some kind of training. 20 Q. And who gives them that training? 21 A. Was Connor -- Connor. He was in charge of 22 safety. 23 Q. And did you have any role in -- in that training 24 or in Colin's work? 25 A. Sorry? Do I have what?</p>
<p style="text-align: right;">Page 28</p> <p>1 Q. Did you play any part in Colin's safety 2 training? 3 A. No. No. 4 SARA KINCAID: I'm sorry. I'm just going to 5 object to the question. I think you misstated the name of 6 the worker too. 7 BY ERICA FRANKLIN: 8 Q. Oh, so the person who -- so I'm asking about the 9 person who -- who provided the trainings and wondering if 10 you -- you worked with that person at all on the 11 trainings. 12 A. No. Him was, like, in the office. Every time 13 you hire a person, first they will go to the office. They 14 will check his background, Newway's office. 15 Then when he comes to the site, then Connor 16 would, you know, give him a trainer -- a training, you 17 know, on site, you know, with a Newway rules, with a 18 Washington state, you know, law and stuff like that. 19 But I wasn't part of that. We are a Connor -- 20 his job was -- full-time job just to look after safety. 21 Q. Okay. So let's go back for a moment. 22 You were telling me how, if you -- if you saw a 23 safety issue, for example, you would contact the person's 24 foreman. 25 Would you follow up later to see if the issue</p>	<p style="text-align: right;">Page 29</p> <p>1 had been resolved? 2 A. Yes. And then the foreman would speak to 3 Connor, you know, that safety guy. So every -- everything 4 that happened on that job, it's got to be all, you know, 5 right -- you know, in the records. Yes. 6 Q. Okay. Did you see the workers working 7 throughout the day? Were you physically there watching? 8 A. No. Like I said, you know, nothing were like 9 three hour, two 44s, and the one 13. All I -- all I do 10 all day long is going back and forth and, you know -- and 11 make sure everybody was working safe. 12 Q. Okay. How many different companies were working 13 at the job site during the -- the time period we're 14 talking about -- February 20 -- 15 A. You mean -- 16 Q. -- 18 to the August 2020? 17 A. How many companies there were in -- on that 18 project? Like -- 19 Q. Yeah, if you know. 20 A. Yeah. It was electrical company, structural 21 company, plumbing company, rebar company -- rebar company, 22 and then was another one -- there were pouring the floors 23 for us. I can't remember they -- the name now. 24 You know what? I would say probably six, seven, 25 eight companies.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. And how many Newway workers were there</p> <p>2 during this time period?</p> <p>3 A. How many what? Sorry.</p> <p>4 Q. How many workers were working for Newway at the</p> <p>5 Denny -- 1120 Denny during this time period, if you know</p> <p>6 approximately?</p> <p>7 A. We had a prob -- I will say 70 people to work --</p> <p>8 not right at the beginning but probably a halfway up or</p> <p>9 a -- or quarter of a way up we probably -- yeah. At least</p> <p>10 I will say seven -- probably 70 people.</p> <p>11 Q. Seventy?</p> <p>12 A. Yes. 7-0.</p> <p>13 Q. Okay. And were there Baja Concrete employees on</p> <p>14 the site while you were there?</p> <p>15 ALEX LARKIN: Object to the form of the</p> <p>16 question.</p> <p>17 Go ahead.</p> <p>18 ERICA FRANKLIN: Sorry. Objection as to the</p> <p>19 form?</p> <p>20 ALEX LARKIN: Form of question. Just preserving</p> <p>21 the objection --</p> <p>22 ERICA FRANKLIN: Thank you.</p> <p>23 BY ERICA FRANKLIN:</p> <p>24 Q. So between February 2018 and August 2020, were</p> <p>25 there Baja Concrete -- people who worked for the Baja</p>	<p style="text-align: right;">Page 31</p> <p>1 Concrete on the site?</p> <p>2 A. From when -- from February 7th --</p> <p>3 Q. February -- February 2018 through August '20, in</p> <p>4 that time period -- yes -- were there Baja workers?</p> <p>5 A. Yes. There were some workers there, yes.</p> <p>6 Q. Do you know how many approximately?</p> <p>7 A. I'll be honest with you. I don't know the</p> <p>8 exactly amount, no. I --</p> <p>9 Q. Okay. That's -- I appreciate your honesty.</p> <p>10 And so what work were these Baja workers</p> <p>11 performing?</p> <p>12 A. They had some labors and some cement finishers.</p> <p>13 Q. And can you explain how this fits into Newway's</p> <p>14 work? Like, what piece of the puzzle were the Baja</p> <p>15 workers doing?</p> <p>16 SARA KINCAID: Objection to the form of the</p> <p>17 question.</p> <p>18 Sorry. Tony, you can go ahead and answer.</p> <p>19 BY ERICA FRANKLIN:</p> <p>20 Q. Well, maybe let me rephrase.</p> <p>21 Were the -- were workers working for Baja, were</p> <p>22 they doing the same work as other workers working for</p> <p>23 new -- Newway?</p> <p>24 ALEX LARKIN: Object to the form of the question</p> <p>25 again.</p>
<p style="text-align: right;">Page 32</p> <p>1 BY ERICA FRANKLIN:</p> <p>2 Q. You can still go ahead and answer.</p> <p>3 Maybe -- let me rephrase to be more clear.</p> <p>4 Let -- let's just switch gears for a moment.</p> <p>5 Let -- I have some questions for you about worker hiring.</p> <p>6 How many -- how are people hired by Newway in</p> <p>7 general? How -- can you just walk me through how worker</p> <p>8 hiring works at Newway?</p> <p>9 A. Sorry. Can you repeat?</p> <p>10 Q. Sure. Can you please walk me through the hiring</p> <p>11 process at Newway? How -- how do workers come on board?</p> <p>12 A. How they -- how they -- I'll be honest with you.</p> <p>13 I -- I never ever hire one of a Baja guys. And the hire</p> <p>14 -- you know, Tom Grant will communicate with Roberto Soto,</p> <p>15 you know, when he needs, you know, guys.</p> <p>16 I didn't hire not even one person on that -- not</p> <p>17 even my carpenter -- the carpenter that will come from the</p> <p>18 union hall, I never did any hire then. Never, ever did</p> <p>19 any hire them.</p> <p>20 Q. Okay. Do you -- even if you weren't personally</p> <p>21 involved, do you know how workers were hired to work at</p> <p>22 the -- at 1120 Denny?</p> <p>23 A. No. I don't know how they did get hired, no.</p> <p>24 Like I said, my expertise was make sure, you know, we get</p> <p>25 the job safe and done on time, you know, on schedule. I</p>	<p style="text-align: right;">Page 33</p> <p>1 never -- that is part of the management.</p> <p>2 Q. Okay. Do you know who would know about how</p> <p>3 workers were hired?</p> <p>4 A. No. No, I -- no, I do not.</p> <p>5 Q. Just -- just one moment, please.</p> <p>6 So who -- who did you report to at 1120 Denny</p> <p>7 Way?</p> <p>8 A. Who do I report to?</p> <p>9 Q. Who's your boss?</p> <p>10 A. Who do -- I -- I was communicating with Tom</p> <p>11 Grant, which is the PM, the project manager.</p> <p>12 Q. Okay. Was he your boss?</p> <p>13 A. Is what my boss?</p> <p>14 Q. Yeah. Just --</p> <p>15 A. Yeah. I consider him my boss -- as a boss, yes.</p> <p>16 Q. Okay.</p> <p>17 COURT REPORTER: Just for the record, I don't</p> <p>18 have, counsel, whatever you just said because you spoke at</p> <p>19 the same time as the witness so it's not on record.</p> <p>20 ERICA FRANKLIN: I apologize. Let me just ask</p> <p>21 one more time.</p> <p>22 BY ERICA FRANKLIN:</p> <p>23 Q. Was Tom Brown your boss?</p> <p>24 A. Tom Grant, yes.</p> <p>25 Q. And what was your relationship like with</p>

<p style="text-align: right;">Page 38</p> <p>1 A. No. Mr. Grant, every time, you know, needs 2 something done, he will call Roberto -- Roberto Soto. 3 And -- if he needs guys. But then, you know, I had a 4 cement finish foreman. His -- his name is Mario. He's 5 the one who was communicate, you know, with the -- with 6 the finisher from Ba. 7 Q. Can you spell his name, please? 8 A. Sorry? 9 Q. Could you please spell his name for the record. 10 The cement foreman. 11 A. You mean Mario? 12 Q. Yeah. What -- how do you spell that? 13 A. I don't know his last name. It's M-a-r-i-o. 14 Mario. 15 Q. Okay. So how would Mr. Grant find out what was 16 going on with the Baja workers? 17 ALEX LARKIN: Object to the form. 18 Go ahead, Mr. Machado. 19 BY ERICA FRANKLIN: 20 Q. You can still answer the question. 21 A. How -- sorry? Can you repeat? How Mr. Grant? 22 Q. How did Mr. Brown -- Mr. Grant find out what the 23 Baja workers were up to? 24 ALEX LARKIN: Object to form. 25 And, Ms. Franklin, if you could --</p>	<p style="text-align: right;">Page 39</p> <p>1 THE WITNESS: I -- I don't know. 2 ALEX LARKIN: If you could -- if you could 3 phrase your questions in a different way rather than 4 referring to workers or employees of Baja, Ms. Franklin, 5 as that is disputed in the appeal. 6 ERICA FRANKLIN: Understood. Thank you. 7 UNIDENTIFIED SPEAKER: Hey, Alex -- 8 BY ERICA FRANKLIN: 9 Q. Mr. Machado, did -- did Mr. Grant communicate 10 directly with Mr. Soto? 11 A. Sorry. I -- I didn't understand. Mr. Grant 12 communicate what? Sorry. 13 Q. With Mr. Soto. 14 A. Yes. 15 Q. And were you involved in those communications? 16 A. No. Like -- like I said at -- I never got 17 involved with the Baja, no -- with the Baja workers. 18 Mr. Grant would call and tell them, you know, 19 every time he needs people. But I got nothing to do with 20 that. It's only Mr. Soto and Mr. Tom Grant. 21 Q. Were the Baja workers doing something 22 differently from the other workers working for Newway? 23 ALEX LARKIN: Object to the form. 24 BY ERICA FRANKLIN: 25 Q. You can still answer.</p>
<p style="text-align: right;">Page 40</p> <p>1 So, Mr. Machado, if there's an objection, unless 2 your attorney tells you that you can't answer, you can 3 still just go ahead and answer the question. 4 So -- let me just get my train of thought back. 5 (Record read.) 6 THE WITNESS: No. I don't see any -- anything 7 different. I mean, I don't see anything different. 8 BY ERICA FRANKLIN: 9 Q. Thank you. Let's -- just one moment. Sure. 10 Let's take a five-minute break, please, and then 11 we can go back on the record. 12 VIDEOGRAPHER: Okay. All right. We are 13 going -- we are going off record. The time now is 14 9:50 a.m. 15 (Recess.) 16 VIDEOGRAPHER: We are back on record. The time 17 now is 9:58 a.m. 18 E X A M I N A T I O N 19 BY SARA KINCAID: 20 Q. Mr. Machado, this is Sara Kincaid. I just 21 wanted to clarify briefly. 22 Ms. Franklin had asked you earlier if you had 23 spoken with anyone in preparation for your deposition 24 today. 25 Did you speak with me prior to your deposition?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes. I been reading your emails. And, yes, 2 I -- yeah. I spoke with you, yes. 3 Q. Okay. Thank you. I just wanted to clarify that 4 for the record. 5 ERICA FRANKLIN: Thank you, Ms. Kincaid. I 6 appreciate it. 7 E X A M I N A T I O N 8 BY ERICA FRANKLIN: 9 Q. Okay. So I just wanted to clarify something as 10 well. 11 While -- were there workers at 1120 Denny Way 12 who were paid by Baja Concrete? 13 A. There were workers -- I mean, I'm pretty sure, 14 you know, Baja Concrete -- Baja Concrete was paying -- 15 paying its workers, not Newway. 16 Q. Okay. So for the sake of clarity, for the rest 17 of this deposition, I'm going to refer to the workers who 18 were being paid by Baja Concrete as the Baja workers. 19 Okay? 20 ALEX LARKIN: And, for the record, I -- I'll 21 just say I have a standing objection to the 22 characterization of them as Baja workers. 23 ERICA FRANKLIN: Okay. 24 ALEX LARKIN: So that -- that objection stands 25 throughout the deposition.</p>

<p style="text-align: right;">Page 42</p> <p>1 ERICA FRANKLIN: Thank you. I think hopefully 2 that will streamline things a little bit. 3 BY ERICA FRANKLIN: 4 Q. Who gives the workers at 1120 Denny instructions 5 on their day-to-day tasks? 6 A. On the -- on the daily basis was, you know, my 7 cement finish foreman and my labor foreman. 8 Q. And how does -- how does it work giving them 9 instructions? Is it on a task-by-task basis or beginning 10 of the workweek, beginning of the day? 11 A. I mean, when they -- you know, in the morning, 12 like I said, I used talk to my foreman. And then my 13 foremans will grab whatever -- you know, whatever was on 14 site and get their working done. That -- that's all. 15 Q. So for the foremen who gave the workers 16 instructions, did they get those instructions from you? 17 A. In the morning, I talk to my foremen. And I 18 tell them what -- you know, through the day what -- what 19 you have to be done; right? To the finisher, to the 20 carpenters, to the -- to the labor foreman. 21 Q. And do those -- do your instructions get passed 22 on to the workers by those foremen? 23 A. Yes. I only -- I don't give them no 24 instructions to my workers. I only go up to my foremans. 25 Q. You only go up to your foremen you said.</p>	<p style="text-align: right;">Page 43</p> <p>1 A. Yes. Yes. 2 Q. And who monitors the performance of the workers 3 to make sure they're doing what they were asked to do? 4 A. My foremen would walk around and, you know, 5 super-- supervising the. 6 Q. And you were walking around as well also 7 supervising? 8 A. Yeah. But I was more, like, with the -- like, 9 you know, carpentry and stuff like that. 10 But then, like I said, if I see -- pretty 11 simple -- a cement finisher is grinding without a vacuum, 12 then I will stop him. If I see a labor chipping 13 something, for example, with no safety glasses, no 14 earplugs, I will stop him again. You know, and then will 15 call his foreman and let him know. 16 But most of the stuff, me, I was involved, you 17 know, with the carpentries. 18 Q. What if you saw something -- it wasn't -- say 19 you saw a worker doing something that wasn't a safety 20 problem but they were doing the job wrong in some ways; 21 would you intervene? 22 A. No. My foreman actually -- he was pretty good. 23 He was, you know, in control of everything. My labor 24 foreman or my cement finish foreman. 25 Q. How much id you talk to your labor foreman</p>
<p style="text-align: right;">Page 44</p> <p>1 throughout the day? 2 A. You know, in a morning. Then, if few plans 3 change, I was go talk to him. 4 I will come down. We all sat in, you know, for 5 lunch. If he has any concerns, he will talk to me. But, 6 you know, like I said, I -- I keep touching, you know, 7 bases with my foremans all the time. 8 Q. So if plans changed and you communicated that to 9 your foreman, would the foreman than communicate that to 10 his workers -- the change in plans? 11 A. Yes. If it is a change on a plan, like I said, 12 lot -- lot of times, we supposed to be pouring the floor 13 let's say tomorrow morning. And then in the middle of the 14 afternoon, I receive an email or a phone call, Tony, 15 the -- the pour is canceled. Respond. 16 So then I got to go tell my foreman, oh, we 17 change the plan. We no pouring the -- this slab, for 18 example, at 5:00 a.m. We going to do the slab at 19 9:00 a.m. Or sometimes, you know, we going to do the slab 20 next day. 21 All depends, you know, how big -- how big the 22 issues they were. 23 Q. Okay. And, when you went to a -- to a foreman 24 and changed plans, did the foreman have to -- have to 25 listen to you and go with the change of plans?</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yeah. He's got to listen. He's got to listen 2 -- you know, he's got to listen to me, my foremans, yes. 3 Q. And what if a worker had questions or concerns 4 about the work they were being asked to do? Who would 5 they go to? 6 A. If the workers they have any -- 7 Q. Any questions or concerns about the work that 8 they're being asked to do? 9 A. They talk to the foreman. 10 Q. Okay. Would they ever talk directly to you? 11 A. No. To the -- my foremans. 12 Q. And what if -- what if a foreman has a question 13 about what needs to be done? What -- what would the 14 foreman do? 15 A. Well, the foreman lot of times, you know, if he 16 doesn't -- he will ask me. Wants make sure, you know, we 17 get them done, you know, right. 18 Q. So who tells workers when it's time to leave on 19 a given day? 20 A. Well, we were based on eight hours day. But 21 then you get the concrete crews. Sometimes -- you know, 22 Seattle was a busy industry. We order so many concrete -- 23 meters of concrete in an hour. 24 And sometimes, because of the traffic or it -- 25 any issues, last things steady takes six, seven hours;</p>

<p style="text-align: right;">Page 46</p> <p>1 sometimes will take ten, eleven hours. So the guys, they 2 were involve only -- you know, they were involve on -- on 3 a concrete, they have to stay there until, you know, they 4 finish. 5 Q. Who would make the decision that an eight-hour 6 day needed to be extended to a longer day? 7 A. I mean -- 8 Q. Whose decision was that? 9 A. The rule, you know, it's eight -- you know, you 10 working eight hours. But, like I said, lot -- lot of 11 times, you -- things change. You stay, you know, ten, 11 12 to sometimes even 12 hours. 13 Q. Right. So who decided whether it would be an 14 eight-hour day or a ten- or 11-hour day? Who made that 15 decision? 16 A. Who made -- I -- I -- I did lot of times. You 17 know, if you need the guys to stay an hour or two, I 18 always go to foreman, "Oh, today we got to stay a little 19 late. We got to get, you know, this or that done." You 20 know what I'm saying? So -- 21 Q. And did the foreman have any choice? 22 A. In the foreman what? 23 Q. If you asked -- if you told the foreman that his 24 workers needed to stay late, did the foreman have any 25 choice? Or did the workers have to stay late?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. No. No. Most -- most of the guys, you send 2 them home eight hours, they were begging, you know, "I 3 want to stay longer. I need the overtime." No. They 4 never complain because they have to stay late. No. 5 Q. And was a -- was a foreman able to decide he 6 didn't want his workers working late that day? Or did a 7 foreman have to listen -- 8 A. Oh -- 9 Q. -- to you? 10 A. The foreman, he will talk to the guys. 11 Sometimes lot of guys they have a -- "Oh, today I cannot 12 stay late. I have a plan." So he will go to a different 13 guy. You know what I mean? We don't force them to stay. 14 Q. But -- but somebody on that site has to stay if 15 there's more work to be done and it's already been eight 16 hours; is that right? 17 A. Yes. Sometimes. I mean, we cannot all walk 18 away from the job sites. 19 Q. Okay. Let's -- let's talk a little bit more -- 20 let's talk about injuries on the job. 21 What happens if a worker gets injured on the job 22 at 1120 Denny? 23 A. If the worker gets injured -- 24 Q. Yes. 25 A. -- yeah, a couple times. I saw the ambulance</p>
<p style="text-align: right;">Page 48</p> <p>1 came and took him to the hospital. 2 Q. Is there a protocol that you have to follow if a 3 person gets injured on the job? 4 A. Yes. I mean, we -- we have -- we have to 5 report, you know, to -- to the general contractor, to -- 6 the law provides everything is in -- every accident we 7 have, we have everything, you know, in record. 8 Again, that is my -- our safety guy. He puts, 9 you know -- he puts everything on record, all -- you know, 10 all the accidents, incidents. 11 Q. And who -- are you involved when somebody gets 12 injured? 13 A. If -- if -- no. It's my safety, my safety guy. 14 Q. And for every single injury, is your safety 15 person involved? 16 A. So -- 17 Q. Does your safety person get involved every time 18 a worker gets injured? 19 A. Yeah. 20 Can you repeat, please? I -- I missed 21 something. 22 Q. Sure. Does your safety person get involved for 23 everything single worker -- 24 A. Yes. 25 Q. -- injury?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes. Yes. Yes. It's law. That's why he's -- 2 we hired him on site. Yes. 3 Q. So how does the safety person know that a worker 4 got injured? 5 A. How they know? Like I said, we have a phones 6 and radios so we communicate. Like, couple times we need 7 the crane evacuation, which it's a box -- you know, 8 somebody gets hurt doing it up on a crane. And sometimes 9 you even bring, you know, the paramedics inside the box to 10 assist, you know, the patient. Whatever. Depends how 11 badly you get hurt. 12 Q. Okay. Does a foreman have to notify the safety 13 person if someone gets hurt? 14 A. Yes. They will call the safety guy. Like, like 15 I said, he had a radio or a phone or they call me. So we 16 were in communication all together something happened. 17 Even if it is an evacuation, you know, which happened 18 couple times, everybody have to evacuate. So we got to 19 know how many people we have on site. 20 And then they all stand together, and you got to 21 call every -- you know, everyone's name, make sure, you 22 know, we have, you know, everybody out of the site. 23 Q. Did anyone at -- actually, let me rephrase my 24 question. 25 Who supervised the -- the people we're calling</p>

<p style="text-align: right;">Page 50</p> <p>1 Baja worker who were paid by Baja Concrete?</p> <p>2 A. Who was supervising?</p> <p>3 Q. Who was supervising those workers?</p> <p>4 A. My foremans.</p> <p>5 Q. Were those --</p> <p>6 A. My labor --</p> <p>7 Q. Did anyone who was being paid by Baja supervise</p> <p>8 those workers?</p> <p>9 A. No. Was my foreman supervised --</p> <p>10 Q. Okay.</p> <p>11 A. -- them.</p> <p>12 Q. And so let's talk about Mr. Soto for a moment.</p> <p>13 Did he -- did he drop off workers on the site?</p> <p>14 A. Who me?</p> <p>15 Q. Mr. Soto.</p> <p>16 A. I -- I don't know.</p> <p>17 I'll be honest with you. I start very early in</p> <p>18 the morning and leave late at night. I don't know who's</p> <p>19 transport them to be honest.</p> <p>20 Q. Okay. Do you know if Mr. Soto would -- would</p> <p>21 stay on site throughout the day?</p> <p>22 A. I -- I see him once in a while there. But,</p> <p>23 again, I was busy going back and forth from one place to</p> <p>24 another. You know, I -- I couldn't tell if he was there</p> <p>25 the full time the whole day. I -- I couldn't tell that.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. Do you remember a person named Padro --</p> <p>2 A. Pay --</p> <p>3 Q. -- Garuvacova --</p> <p>4 A. Yes. Padro used to be my cement finish foreman,</p> <p>5 yes.</p> <p>6 Q. And did he supervisor the workers we're calling</p> <p>7 Baja workers?</p> <p>8 A. Yes. He did some at the beginning, yes.</p> <p>9 Q. And did you work closely with -- with Padro?</p> <p>10 A. Do -- do I what? Sorry.</p> <p>11 Q. Did you work closely with Padro?</p> <p>12 A. Did I work with -- yeah. Padro was -- yes, he</p> <p>13 was there same time I was. Yes.</p> <p>14 Q. Okay. And did you communicate with Padro</p> <p>15 instructions that he was supposed to give the Baja worker?</p> <p>16 A. No. I -- yes. I was still appeared was in</p> <p>17 charge. And I tell him, you know, what it's got to be</p> <p>18 done. And then -- and then him was do it -- you know, we</p> <p>19 do his job -- would do his job, yes.</p> <p>20 Q. And just to clarify, the -- you said that Newway</p> <p>21 foreman were supervising the Baja workers.</p> <p>22 A. Yeah. My --</p> <p>23 Q. Were you --</p> <p>24 A. Yeah, my foremans, they were supervising Baja,</p> <p>25 yes.</p>
<p style="text-align: right;">Page 52</p> <p>1 Q. And were you telling those foremen how to</p> <p>2 supervise the Baja workers and what to -- what to ask the</p> <p>3 Baja workers to do?</p> <p>4 A. Yeah. My foremans would tell them what to do,</p> <p>5 yes.</p> <p>6 Q. Right. And you told those foreman what to tell</p> <p>7 the --</p> <p>8 A. Yeah. And --</p> <p>9 Q. -- Baja workers --</p> <p>10 A. Yeah.</p> <p>11 Q. -- to do.</p> <p>12 A. No. No. I don't -- I just tell my foreman,</p> <p>13 "This got to be done today." Sometimes wasn't, you know,</p> <p>14 part of finishers. Newway had some of their own people</p> <p>15 too.</p> <p>16 Then it's up to the foreman to choose which</p> <p>17 one -- you know, which ones's going to do this or do that.</p> <p>18 You know what I'm say?</p> <p>19 So I would only relate -- relate to my foreman.</p> <p>20 And then it was his choice to work with his own guys or</p> <p>21 with the Baja guys. You know what I'm saying?</p> <p>22 Q. Okay. So who set the day-to-day schedule for</p> <p>23 the workers?</p> <p>24 A. Who give the -- the schedule for workers?</p> <p>25 Q. Who -- who determined what that day-to-day</p>	<p style="text-align: right;">Page 53</p> <p>1 schedule would be? I guess when it would depart from the</p> <p>2 usual eight-hour day.</p> <p>3 A. I mean, like I -- we -- you know, we every</p> <p>4 day -- every day we plan, you know, the -- the job, you</p> <p>5 know, from one day to the next.</p> <p>6 Like, finishing towards the end for the last</p> <p>7 year was Tom Grant involved with the -- you know, with the</p> <p>8 cement finishers.</p> <p>9 But me, I was involved more with the labors</p> <p>10 and -- and carpenters. Like, on a daily basis, I would</p> <p>11 let him know what's going on, you know. But then you</p> <p>12 get -- it is a time when you get the typical. It's always</p> <p>13 same routine. We put in the floor every week so every day</p> <p>14 it's the same. You know what I'm say? So it's a routine.</p> <p>15 Q. Who decided what time workers needed to come in</p> <p>16 the morning? How -- how would you figure that out?</p> <p>17 A. What -- what time we start in the morning?</p> <p>18 Q. Yes.</p> <p>19 A. I mean, on a -- daily hours, we start at seven</p> <p>20 o'clock, work till the -- you know, three o'clock.</p> <p>21 And the days we were pouring slabs and, you</p> <p>22 know, doing concrete, then I will be come, you know,</p> <p>23 4:00 -- start 4:00, five o'clock in the morning.</p> <p>24 Then we would go home sometimes, you know --</p> <p>25 some, they will go home after eight hours. Some they will</p>

<p style="text-align: right;">Page 54</p> <p>1 stay ten, 12 hours. You know, all depends on the -- you 2 know, how the day goes or how the job went. 3 Q. Okay. Who would decide that a day needed to 4 start at 4:00 a.m. rather than the usual 7:00? 5 A. It was -- what's his name? Onni. They want to 6 start early because so we could get concrete on time. 7 Because if you -- if you go late, then with a rush hour 8 and a lot of traffic on the -- you know, in the streets. 9 So that's why -- but every company -- most of 10 the company, they do that. They want to start pouring 11 concrete early in the morning to avoid the -- the rush 12 hour -- you know, the traffic and stuff like that. 13 Q. Okay. So when Onni wanted the work to start 14 early on a given day, how would that -- how would that 15 instruction be given to the workers? How would that get 16 communicated down to worker? 17 A. I will -- I will go to my foreman, and I let 18 them know, Tomorrow, we going to start repouring concrete 19 at 4:00 or 5:00 or sometimes even the 6:00 a.m. because -- 20 I will tell -- and then him will choose his -- you know, 21 would choose the guys he wants bring with him. 22 Q. Okay. Who determined when -- when it was time 23 for the workers to take a break? 24 A. They -- they -- they do it on their own. 25 You know, that whole crew, when I start there --</p>	<p style="text-align: right;">Page 55</p> <p>1 when I came -- you know, when I came on site, I guess most 2 of the time they make an agreement. They get all 3 together. So they had a break at 10:00 a.m. -- 10:00 till 4 1030. And then I believe it's from 1:00 till 1:30. Each 5 time, a half an hour. 6 Q. And what if -- what if workers wanted to take a 7 break outside of those established times? 8 A. If you -- they want to take a break out of what? 9 Sorry. 10 Q. If they wanted to take a break at a different 11 time. For some reason they needed a break but it wasn't 12 the official break time, what would happen? 13 A. Oh, we never stop anybody take a break. Like, 14 for example, sometimes we were doing slab -- they all 15 taking breaks, but then they alternate. You know, instead 16 he probably -- instead, yeah, I go at one o'clock. I go 17 at 12:30. I come back at 1:00, and then the next one. 18 So they -- they communicate together. You know, 19 everybody takes a break, gets along. 20 Q. So does Newway have a sick -- a sick leave 21 policy? 22 A. A what? Sorry. 23 Q. If -- if workers are sick at New -- at Newway, 24 what's -- what's the policy? 25 A. If your guy -- if he gets sick?</p>
<p style="text-align: right;">Page 56</p> <p>1 Q. Yeah. If a person is sick -- 2 A. I mean, we had a lot of guys that -- some of 3 them, they will go to the doctor. Even bring, you know -- 4 I mean, but I -- if you are sick, it's not -- you know, 5 most of the guys, they will call you and let you know, 6 "Hey, Tony, I don't feel -- I don't feel so good today," 7 or they will call their foreman, you know, and talking, 8 you know, are not employees. 9 And -- or sometimes a guy miss. You know, I 10 will ask the foreman, "Where is this guy?" "Oh, he sick. 11 He call me." Okay. No problem. 12 And some of the guys sometimes, you know, if 13 they are really sick, they will go to the doctor and bring 14 a -- a piece of paper or something. But that's all I 15 could. 16 Q. Okay. So if -- so if a worker got sick, would 17 they sometimes -- they would communicate directly with 18 you, and sometimes it would be with their foreman? Is 19 that what you're saying? 20 A. Yeah. Most of them, they were -- they were with 21 a foreman. The guys, you know, they were with Newway for 22 a long time. Not too many. One or two, sometimes they 23 will call the foreman and -- and call me too, said, "Hey, 24 Tony, I'm -- you know, I'm very sick. I'm real sick." I 25 said, "That's okay. No problem. I'll see you tomorrow,</p>	<p style="text-align: right;">Page 57</p> <p>1 next day." 2 Sometimes you get the flu. Sometimes you stay 3 two days, three days. You know, all depends on, you 4 know -- 5 Q. If a -- 6 A. All depend how bad it was. 7 Q. If a worker contacted you because they were 8 sick, did you have to check with their foreman? Or did 9 you have authority to just let them stay home? 10 A. No. We will communicate with the foreman. You 11 know, with the foreman we -- we will communicate. I said 12 oh, Joe or Mario or whatever, he called this morning. And 13 then I will tell him, "Oh, by the way, he called me too. 14 He told me, you know, he's very sick." 15 Q. Okay. And so the workers were calling -- Baja 16 workers who were paid by Baja, were -- would they ever 17 reach out to you directly if they needed -- 18 A. No. Never. 19 Q. Okay. Were you aware if a Baja worker was -- 20 was sick? 21 A. No. 22 Q. You just had no idea? 23 A. No. No idea, no. No. 24 Q. How were you able to -- to make sure the Baja 25 workers were getting the -- the right work done if you</p>

<p style="text-align: right;">Page 58</p> <p>1 didn't know who was -- who was there and who wasn't there?</p> <p>2 SARA KINCAID: Objection to the form of the</p> <p>3 question.</p> <p>4 You can go ahead and answer --</p> <p>5 BY ERICA FRANKLIN:</p> <p>6 Q. Go ahead and answer, Mr. Machado.</p> <p>7 So if you -- if you didn't know that a worker</p> <p>8 was sick or not, did that prevent you from supervising the</p> <p>9 work of the Baja workers?</p> <p>10 A. If I didn't know what -- they was -- I don't</p> <p>11 know because I wasn't involved with the Ba -- with the</p> <p>12 Baja employees, no. I --</p> <p>13 Q. Did -- who did a Baja worker go to if they</p> <p>14 needed to take time off because they were sick?</p> <p>15 A. I guess Roberto's got a -- has to communicate</p> <p>16 with a Tom Grant or -- I don't know. I wasn't involved</p> <p>17 with it -- with those things. I don't know anything.</p> <p>18 Q. Okay. Were you involved in -- in disciplining</p> <p>19 employees?</p> <p>20 A. Discipline employ -- no.</p> <p>21 Q. So what if -- what if someone did something</p> <p>22 really bad? It didn't seem like they should be a</p> <p>23 construction worker anymore. What happened with that</p> <p>24 person?</p> <p>25 A. It -- sorry. Can you -- if a guy what? So --</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. So if there's a worker who just has really,</p> <p>2 really bad performance --</p> <p>3 A. Yeah.</p> <p>4 Q. -- and -- and you observed this, would anything</p> <p>5 happen?</p> <p>6 A. That was between my -- my foremans -- you know,</p> <p>7 my foremen, they were the -- I don't know -- communicate</p> <p>8 with the Robert -- I don't know the -- like I -- if -- if</p> <p>9 it was an issue, they -- they will solve the problem</p> <p>10 between them and my foremans.</p> <p>11 Like I said, I never got involved with it --</p> <p>12 anybody from Baja.</p> <p>13 Q. So were you responsible for quality control</p> <p>14 throughout the -- throughout the work site? The</p> <p>15 construction site. Making sure the job was done well.</p> <p>16 A. Yes.</p> <p>17 Q. And how did you -- what did you do to make sure</p> <p>18 that the work was progressing on schedule?</p> <p>19 A. I mean, I been doing this for many years. And</p> <p>20 then we have a meeting before I -- I agreed with the</p> <p>21 schedule. Before I -- I -- before I agreed with the</p> <p>22 schedule, I got to make sure I get them done on time.</p> <p>23 Otherwise, I -- I would ask, you know, for a extra time.</p> <p>24 You know -- you know what I'm saying?</p> <p>25 Q. Okay. What would happen if the work that the</p>
<p style="text-align: right;">Page 60</p> <p>1 Baja workers was doing didn't get done on time?</p> <p>2 A. They didn't do -- again, my foremans, they never</p> <p>3 complained. They mix, you know, Baja guys with, you</p> <p>4 know -- with our guys. So I guess they -- they were work</p> <p>5 fine working together.</p> <p>6 Q. I'm sorry. Can you repeat that last thing you</p> <p>7 said?</p> <p>8 A. You know, my foremen, they never complained. If</p> <p>9 they need something done, they will mix, you know, guys</p> <p>10 with a Baja with our guys; right? So to make sure they</p> <p>11 get them done.</p> <p>12 I mean, we wouldn't -- we wouldn't separate for</p> <p>13 the guy -- the Baja guys in one -- you know, one side and</p> <p>14 our employees on the other. No. They were working</p> <p>15 together.</p> <p>16 Q. So they -- would you say they were sort of</p> <p>17 interchangeable in terms of the work they were doing?</p> <p>18 SARA KINCAID: Objection to the form of the</p> <p>19 question.</p> <p>20 You can go ahead and answer.</p> <p>21 THE WITNESS: Sorry. Go ahead again.</p> <p>22 BY ERICA FRANKLIN:</p> <p>23 Q. Would you say that the Baja workers and the --</p> <p>24 A. Newway.</p> <p>25 Q. -- New -- the other workers were -- were doing</p>	<p style="text-align: right;">Page 61</p> <p>1 the same -- capable of doing the same type of work?</p> <p>2 A. Yes. Yes. They were working together, yes.</p> <p>3 Q. So would it be a problem if the work that the</p> <p>4 Baja workers were doing got off schedule -- if they got</p> <p>5 behind?</p> <p>6 A. Oh, I never -- I never heard any complaints</p> <p>7 or -- I can't, you know, give you any -- any -- you know,</p> <p>8 any -- I never heard, you know, complain, "They don't work</p> <p>9 together." Or I -- you know, I -- I couldn't answer that.</p> <p>10 Q. Okay. But was it important that they stayed on</p> <p>11 track -- the work that the Baja workers were doing?</p> <p>12 A. Every -- everybody's important. I mean, we got</p> <p>13 to get our job done, you know, on time.</p> <p>14 Q. Whose -- whose job was it to make sure that the</p> <p>15 Baja workers were getting their work done on time?</p> <p>16 A. A foreman.</p> <p>17 If he had any issues -- you know, I ask him, can</p> <p>18 we -- can we get this done, you know, this week? Depends</p> <p>19 how big the job was. And, if he was any issues, my</p> <p>20 foreman will come and report to me. But he never did.</p> <p>21 He never came and report to me, "Oh, Baja, they</p> <p>22 don't want to do," or, "Our guys, they don't want to" -- I</p> <p>23 never heard any complains.</p> <p>24 Q. Okay. But you would communicate your</p> <p>25 expectations to the Baja foreman -- to the foreman</p>

<p style="text-align: right;">Page 62</p> <p>1 supervising the Baja workers.</p> <p>2 A. Who me?</p> <p>3 Q. You would communicates your expectation about</p> <p>4 when a job need to be done by; is that correct?</p> <p>5 A. No, I --</p> <p>6 SARA KINCAID: Objection to the form of the</p> <p>7 question.</p> <p>8 Sorry. Tony, you can go ahead.</p> <p>9 THE WITNESS: I will talk to my foremen. Like</p> <p>10 I -- I never got involved with the Bajas. Never. And if</p> <p>11 he, my foreman, has an issue, then it would relate to me.</p> <p>12 But he never came and, you know, relayed any issues so I</p> <p>13 guess everything was fine.</p> <p>14 BY ERICA FRANKLIN:</p> <p>15 Q. Okay. So I understand you didn't communicate</p> <p>16 directly with the Baja workers, but you did communicate</p> <p>17 with the foreman supervising them about the timelines that</p> <p>18 they needed to -- to work on; right?</p> <p>19 A. Yes. My foreman -- I will go to him on many</p> <p>20 days. You need -- and then it would put okay. We got to</p> <p>21 get this done, you know, in that time. Again, was my</p> <p>22 foremans all the time.</p> <p>23 Q. Okay. And did you communicate with the foremen</p> <p>24 who were supervising the Baja workers about how a task was</p> <p>25 supposed to be done to make sure it was done correctly?</p>	<p style="text-align: right;">Page 63</p> <p>1 A. No. I dont' know</p> <p>2 SARA KINCAID: Objection to the form.</p> <p>3 Sorry, Tony. You can go ahead.</p> <p>4 THE WITNESS: I don't know. I will talk only to</p> <p>5 my foremen. And then my foremen was communicate with him.</p> <p>6 I don't know what they -- they were talking between the --</p> <p>7 you know, between -- I -- I mean, I understand little bit</p> <p>8 Spanish, not 100 percent.</p> <p>9 But, again, I talk to my foreman. If he had any</p> <p>10 issues with -- relate to me. But I don't know what they</p> <p>11 talk, you know, between them -- you know, he just grab the</p> <p>12 guys and go get his work done, and that's pretty much.</p> <p>13 BY ERICA FRANKLIN:</p> <p>14 Q. So let me make sure I understand. There were</p> <p>15 some foremen on the site who was supervising the workers</p> <p>16 we're calling Baja workers -- worker who are being paid by</p> <p>17 Baja, and they were --</p> <p>18 A. My foremen.</p> <p>19 SARA KINCAID: Objection.</p> <p>20 Sorry. Go ahead.</p> <p>21 ERICA FRANKLIN: +And there were other foremen</p> <p>22 who were supervising workers being paid by Newway; is that</p> <p>23 correct?</p> <p>24 SARA KINCAID: Objection to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">Page 64</p> <p>1 Tony, you can answer.</p> <p>2 THE WITNESS: Yes. My foremen was paid by</p> <p>3 Newway, and they was supervising the Bajas, yes.</p> <p>4 BY ERICA FRANKLIN:</p> <p>5 Q. Okay. So some foremen were supervise Baja</p> <p>6 workers, and some were supervising workers being paid by</p> <p>7 Newway; is that --</p> <p>8 SARA KINCAID: Objection.</p> <p>9 BY ERICA FRANKLIN:</p> <p>10 Q. -- make sure I understand.</p> <p>11 SARA KINCAID: Sorry. Objection to the form of</p> <p>12 the question.</p> <p>13 BY ERICA FRANKLIN:</p> <p>14 Q. You can go ahead and answer.</p> <p>15 A. Yes. Was --</p> <p>16 Q. Okay.</p> <p>17 A. -- paid by -- he was paid by Newway, yes.</p> <p>18 Supervising the Bajas, yes.</p> <p>19 Q. Did you have a different relationship with the</p> <p>20 workers -- with the foremen who were supervising workers</p> <p>21 paid by Baja from the relationship you had with the</p> <p>22 worker -- the supervisors supervising working paid by</p> <p>23 Newway?</p> <p>24 SARA KINCAID: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">Page 65</p> <p>1 Tony, you can answer.</p> <p>2 THE WITNESS: I have a good relationship with --</p> <p>3 with everybody. You know, when I been all other the West,</p> <p>4 all over Canada, I -- I been -- I been well respect by</p> <p>5 every -- you know, everybody. So --</p> <p>6 Q. That's great.</p> <p>7 A. -- I don't have any -- I don't have anything</p> <p>8 against the Baja. I don't have anything against anybody,</p> <p>9 anyone.</p> <p>10 Q. Did you give -- did you supervise the -- so I'm</p> <p>11 comparing the workers -- the foremen who were supervising</p> <p>12 Baja workers with the foremen who were supervising workers</p> <p>13 paid by Newway.</p> <p>14 So I'm wondering if you -- the way that you</p> <p>15 instructed those foremen was similar, or if there's a</p> <p>16 difference.</p> <p>17 ALEX LARKIN: Object to the form of the</p> <p>18 question.</p> <p>19 SARA KINCAID: I'll join in that objection.</p> <p>20 Tony, you can answer.</p> <p>21 THE WITNESS: No. I don't have any difference,</p> <p>22 you know, between my foremans because of Baja or any --</p> <p>23 no. They all get treat, you know, the same. They all --</p> <p>24 they are all -- are respect.</p> <p>25</p>

<p style="text-align: right;">Page 66</p> <p>1 BY ERICA FRANKLIN:</p> <p>2 Q. Okay. In other words, when you were giving a</p> <p>3 foreman instructions, did it matter whether the workers</p> <p>4 they were supervising were paid by Newway or --</p> <p>5 A. No.</p> <p>6 Q. -- Baja?</p> <p>7 A. No. To me, it is no. No. No problem.</p> <p>8 Q. You give them the same set of instructions.</p> <p>9 A. No. No. I have no problems, you know. You are</p> <p>10 what you are.</p> <p>11 Q. And --</p> <p>12 A. Excuse me.</p> <p>13 Q. Just -- just a moment. Hang on.</p> <p>14 So, when we -- when we talked previously, you</p> <p>15 would walk around the work site. And, if you saw</p> <p>16 problems, you would notify the foremen; correct?</p> <p>17 A. Yes.</p> <p>18 Q. So --</p> <p>19 A. De -- depend --</p> <p>20 Q. Is that also with -- if it was a foreman who was</p> <p>21 supervising workers paid by Baja?</p> <p>22 SARA KINCAID: Objection to the form of the</p> <p>23 question.</p> <p>24 BY ERICA FRANKLIN:</p> <p>25 Q. You can answer.</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Like I said, all -- all depends how big was for</p> <p>2 me to stop. If it's a big thing, then I got to call my</p> <p>3 safety guy. If it's a minor thing, I will call the</p> <p>4 foreman and make sure, you know, correct -- correct them.</p> <p>5 That's all.</p> <p>6 But at the end point -- if it's a near miss, if</p> <p>7 you're putting your life in jeopardy, then I got to -- I</p> <p>8 got to stop, I got to call my safety guy, I got to grab my</p> <p>9 form, and I got to grab everybody and have a meeting, make</p> <p>10 sure that it does not happen again because I can't lose my</p> <p>11 job because of that.</p> <p>12 Q. Okay. And, if you -- if a job was being done</p> <p>13 incorrectly or too slowly, would you also get involved</p> <p>14 with the foreman and talk to the foreman about the issue?</p> <p>15 A. I would be -- I would -- if it is a problem, I</p> <p>16 will stick around and see that solve -- solve the problem,</p> <p>17 see what's -- you know, what went wrong or what's going --</p> <p>18 you know, what's going on. You know what I'm say?</p> <p>19 I will stay there, not yelling, no scream. You</p> <p>20 know, as a human being, you know, try to correct what --</p> <p>21 you know, get done -- see what it's wrong so we can do it</p> <p>22 perfect. That's --</p> <p>23 Q. Okay.</p> <p>24 A. That's what I would do.</p> <p>25 Q. And you would do that in the case of a foreman</p>
<p style="text-align: right;">Page 68</p> <p>1 supervising workers paid by Baja; correct?</p> <p>2 A. What --</p> <p>3 SARA KINCAID: Objection to the form of the</p> <p>4 question.</p> <p>5 BY ERICA FRANKLIN:</p> <p>6 Q. So what you just described, talking to the</p> <p>7 foremen about the issue, would you do that if the foremen</p> <p>8 were supervising Baja workers?</p> <p>9 A. My fore --</p> <p>10 SARA KINCAID: Same objection.</p> <p>11 BY ERICA FRANKLIN:</p> <p>12 Q. You can answer.</p> <p>13 A. My -- I mean, that -- I been mention, my</p> <p>14 foremans, they were supervising Bajas, the labors, and the</p> <p>15 cement finishers; right? So, I mean, if there is an issue</p> <p>16 there, I don't care if they are Baja or Newway. If there</p> <p>17 is an issue, I got to help. I got to help. I got to do</p> <p>18 whatever it takes, you know, to make everybody look good;</p> <p>19 right?</p> <p>20 Q. Okay. Let's switch gears a little bit.</p> <p>21 Do you know if there's a formal relationship</p> <p>22 between Baja Concrete and Newway?</p> <p>23 A. Sorry? Is there a what?</p> <p>24 Q. A formal relationship between Baja Concrete and</p> <p>25 Newway --</p>	<p style="text-align: right;">Page 69</p> <p>1 SARA KINCAID: Objection --</p> <p>2 JASON WANDLER: I'm going to object to the form</p> <p>3 of the question.</p> <p>4 SARA KINCAID: Same objection.</p> <p>5 BY ERICA FRANKLIN:</p> <p>6 Q. Let me just -- actually, I think I can rephrase</p> <p>7 this one a little bit.</p> <p>8 So tell me about the relationship between Baja</p> <p>9 Concrete USA Corp and Newway Forming.</p> <p>10 A. I -- I don't know. I met Baja. I met Baja 1985</p> <p>11 in a north of Canada. No --</p> <p>12 Q. What did you mean --</p> <p>13 A. So I met 19 -- 1995. Seven years ago. Or</p> <p>14 2000 -- no. 2015. Sorry. I'm -- I met him in 2015 in --</p> <p>15 in Edmonton, Canada.</p> <p>16 One of our superintendents, Mike Keith --</p> <p>17 actually, he's an American. And he wants take a holiday.</p> <p>18 He was working in a north of Canada. And he ask me if you</p> <p>19 want to go there, you know, for sometime because he wants</p> <p>20 take a break.</p> <p>21 Then his -- his wife, she got sick. Then I end</p> <p>22 up stay there seven months. But I -- when I went there --</p> <p>23 when I got there, they were there already in site -- on</p> <p>24 site -- Baja. Baja Concrete, they were there. That's</p> <p>25 when I met the Carlos Ibarra.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. And who determined what your salary was?</p> <p>4 A. Who what? The owner of the company. When I --</p> <p>5 I made a deal with him, you know. When I was in San</p> <p>6 Diego, I came to Seattle. We made a deal.</p> <p>7 Newway has two shareholders: The president is</p> <p>8 Ezio Bortolussi, and the vice president it is -- what's</p> <p>9 his -- Sal Giantomaso. So we made a deal with the owners,</p> <p>10 you know, with the shareholders.</p> <p>11 Q. And did your salary change at any time between</p> <p>12 February 2020 and -- February 2018 and August 2020?</p> <p>13 A. Yes. It same salary, same money I was making in</p> <p>14 the -- you know, the San Diego. It's same thing.</p> <p>15 Q. Okay. Tell me what factors went into the pay</p> <p>16 that you negotiated when -- when you negotiated your pay</p> <p>17 with Newway.</p> <p>18 A. Sorry. Can you repeat?</p> <p>19 Q. So when you negotiated your pay with Newway --</p> <p>20 A. Yes.</p> <p>21 Q. -- what determined what that pay is? What that</p> <p>22 pay was.</p> <p>23 A. You want -- you want me tell you? I was making</p> <p>24 \$160,000 a year on my --</p> <p>25 Q. And how did --</p>	<p style="text-align: right;">Page 107</p> <p>1 A. -- salary.</p> <p>2 Q. How did you and Newway determine that that was</p> <p>3 an appropriate amount?</p> <p>4 A. I mean, I been with the -- with the -- with the</p> <p>5 company. I help built this company for so many years.</p> <p>6 Actually, they offer me that -- that salary. You know, he</p> <p>7 said -- so they were the ones, you know, who offered me</p> <p>8 that, you know, that salary. I said, "Thank you very</p> <p>9 much."</p> <p>10 Q. Okay. And who -- where did your -- did you --</p> <p>11 did you receive paychecks? Direct deposit? How are you</p> <p>12 paid?</p> <p>13 A. By checks were what -- yeah. I get paid -- I</p> <p>14 was getting paid every week.</p> <p>15 Q. Okay. In what -- in what form?</p> <p>16 A. What -- with a -- what do you mean what -- a</p> <p>17 paycheck.</p> <p>18 Q. Were you receiving a paycheck? Were you</p> <p>19 receiving direct deposit into a bank account?</p> <p>20 A. No. I was receiving the paycheck with the --</p> <p>21 with the -- the deduction -- you know, the deductions off,</p> <p>22 you know.</p> <p>23 Q. Okay. And where did that paycheck from come</p> <p>24 from?</p> <p>25 A. Where the pay -- from the payroll company,</p>
<p style="text-align: right;">Page 108</p> <p>1 whatever -- you know, whatever is doing the payroll.</p> <p>2 Q. And you receive -- you said you receive direct</p> <p>3 deposit --</p> <p>4 A. No.</p> <p>5 Q. -- weekly.</p> <p>6 Did you -- were there ever any other direct</p> <p>7 deposits other than those --</p> <p>8 Q. Through --</p> <p>9 Q. -- weekly deposits?</p> <p>10 A. -- Newway? No. No. No. Not from Newway, no.</p> <p>11 Q. Where -- did you receive payment from anyone</p> <p>12 other than Newway?</p> <p>13 A. What -- what -- I got paid to Ba -- Baja, yes.</p> <p>14 I lend them some money. And they paid me, yes.</p> <p>15 Q. How much money did you lend Baja?</p> <p>16 A. All -- you know, I could be wrong. I was</p> <p>17 talking even to -- to my lawyer. I could be wrong. It</p> <p>18 could be -- it wasn't all in one -- all at once.</p> <p>19 I lend the -- what's his name -- Carlos Ibarra.</p> <p>20 I lend him some money. You know, 3,000 one time, another</p> <p>21 time 2,000, then 1500, then 1,000. Altogether, I would</p> <p>22 say -- before I -- I -- I said maybe 20,000, but it wasn't</p> <p>23 20,000. I would say maybe 12, 13,000.</p> <p>24 But he paid me everything. He doesn't owe me</p> <p>25 anything.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. And this was Carlos Ibarra.</p> <p>2 A. Yes. To Carlo, yes.</p> <p>3 Q. Okay. Is there anything in writing showing</p> <p>4 what --</p> <p>5 A. No. I don't have -- I -- like I said, I'm</p> <p>6 honest -- honest to god. I'm honest person.</p> <p>7 When this thing going on, I could have get a</p> <p>8 document and -- with a dates. But, again, I didn't -- I</p> <p>9 didn't get any -- I didn't give him a check. I don't have</p> <p>10 a checkbook to be honest with you. And I don't have any</p> <p>11 document. This is -- you know, it's between me and him,</p> <p>12 you know, the word. But that's what -- that's what I did.</p> <p>13 I don't want to fake because, if he had fake, I</p> <p>14 would be lying to you, even to my bosses, even to myself.</p> <p>15 No. I -- I lend him the money. He give me one</p> <p>16 time 4,000 something, and then they give me another two</p> <p>17 checks. Altogether, like I said, it's probably 12,000</p> <p>18 something -- 12,000, 13,000.</p> <p>19 Q. Okay. And --</p> <p>20 A. If he go to the accountant, she can give you all</p> <p>21 the -- the information.</p> <p>22 Q. Okay. So the money that you loaned when you</p> <p>23 gave Mr. Ibarra money, was that in the form of cash?</p> <p>24 A. Yes. Was cash, yes. Yes.</p> <p>25 Q. And, when he paid you back, what form was that</p>

<p style="text-align: right;">Page 110</p> <p>1 in?</p> <p>2 A. He gave me a check from the company, and then</p> <p>3 twice they wired to me.</p> <p>4 But they -- like I said, I did this normal</p> <p>5 relation because, if you know I'm going to get caught, I</p> <p>6 want to -- but I have nothing to hide.</p> <p>7 This was a true, you know, that -- a true thing</p> <p>8 I did. I help so many to all -- to all my -- through all</p> <p>9 my life. I helped so many people. I never get -- you</p> <p>10 know, they pay me.</p> <p>11 When I was young, if you need the help here and</p> <p>12 there, you know, on my early days, people would help me.</p> <p>13 So, like I said, I did that to him.</p> <p>14 If I know you well, I would do it for you. Not</p> <p>15 a million dollars, not \$100,000. We talking, you know, 2,</p> <p>16 3, 4, 5,000. He pay me, then I lend him money back again.</p> <p>17 I don't think it's a big deal. You know what</p> <p>18 I'm saying? That's way I look at it.</p> <p>19 Q. Okay. So tell me what you loaned him money for?</p> <p>20 ALEX LARKIN: Object to the form of the</p> <p>21 question.</p> <p>22 SARA KINCAID: I'll join in that objection.</p> <p>23 BY ERICA FRANKLIN:</p> <p>24 Q. You can answer.</p> <p>25 A. Carlos, he call me one time. He said, "Tony, I</p>	<p style="text-align: right;">Page 111</p> <p>1 have some guys working down in Seattle. I gotta rent</p> <p>2 someplace. I got to get a van and the car. I have</p> <p>3 money."</p> <p>4 I know he has money. I don't talk to him now</p> <p>5 for the longest time. He still on -- it's still going on</p> <p>6 yet, you know, in Canada. I'm working in Canada.</p> <p>7 And he says, "Tony, I have money, but I don't</p> <p>8 have American money. Can you lend me some money?"</p> <p>9 I said, "How much?"</p> <p>10 "\$3,000." Okay.</p> <p>11 Then he says, "I will put it in envelope.</p> <p>12 Herberto will come." Okay.</p> <p>13 Then two weeks later, "Tony, I need another</p> <p>14 \$1500." Then, Tony, "I need a \$1,000." So -- and then so</p> <p>15 he send me a check. You know, that's the check, you know,</p> <p>16 they send me.</p> <p>17 But, again, I did this without malicion.</p> <p>18 Because I could tell him, you know -- to me, I lend him</p> <p>19 money. You pay me with a check. You pay me with a credit</p> <p>20 card. I don't care as long as I gets my money back.</p> <p>21 That's all I want.</p> <p>22 So I lend him money, not all at once, little bit</p> <p>23 here, little bit there. So he paid me -- I cannot say --</p> <p>24 I cannot say anything bad about him. He paid me.</p> <p>25 Q. Did he pay you exactly what you had paid him?</p>
<p style="text-align: right;">Page 112</p> <p>1 A. Yes.</p> <p>2 ALEX LARKIN: Same objection.</p> <p>3 BY ERICA FRANKLIN:</p> <p>4 Q. How do you know?</p> <p>5 How do you know that he paid you the same amount</p> <p>6 that you paid to him?</p> <p>7 ALEX LARKIN: Same objection.</p> <p>8 BY ERICA FRANKLIN:</p> <p>9 Q. You can answer.</p> <p>10 A. Yes. Whatever I lended to him, he paid -- he</p> <p>11 paid me. No more, no less. No interest. No. No. No.</p> <p>12 Whatever, you know, I lended to him, that's what he paid</p> <p>13 me.</p> <p>14 Q. How did you two keep track of how much he owed</p> <p>15 you?</p> <p>16 ALEX LARKIN: Same objection.</p> <p>17 BY ERICA FRANKLIN:</p> <p>18 Q. You can answer.</p> <p>19 A. I mean, when I lend money, I mean, you mark it</p> <p>20 down; right? I mean, you have to have a track of -- of</p> <p>21 your money.</p> <p>22 Q. Oh, do you have that -- do you have that marked</p> <p>23 down somewhere?</p> <p>24 A. Do I have the -- no. You mark on your head. I</p> <p>25 mean, I give you cash, \$1,000, 1500 -- I mean, 1500,</p>	<p style="text-align: right;">Page 113</p> <p>1 1,000, 3,000, it's easy to -- to figure it.</p> <p>2 You know, I don't mark it down, you know, on a</p> <p>3 piece of paper or on my phone, no.</p> <p>4 Q. Okay. So the money that you lent him, did</p> <p>5 you -- you lent it directly to Carlos, not to his company;</p> <p>6 is that correct?</p> <p>7 ALEX LARKIN: Same objection.</p> <p>8 BY ERICA FRANKLIN:</p> <p>9 Q. You can answer.</p> <p>10 A. Robert, gave him cash in envelope, and he</p> <p>11 would -- he would take it, you know, to do whatever</p> <p>12 after --</p> <p>13 Q. And when he paid you back, did that money come</p> <p>14 from him personally, or did it come from Baja Concrete?</p> <p>15 ALEX LARKIN: Same objection.</p> <p>16 BY ERICA FRANKLIN:</p> <p>17 Q. I'm sorry. You can answer.</p> <p>18 A. From Baja.</p> <p>19 Q. Okay. So it sounds like you -- just to review,</p> <p>20 it sounds like you received pay in the form of your salary</p> <p>21 from Newway, and you received pay from Baja in return for</p> <p>22 your loans to Carlos.</p> <p>23 ALEX LARKIN: Same objection.</p> <p>24 BY ERICA FRANKLIN:</p> <p>25 Q. Did you have pay from any -- any other sources?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. Pay from -- I didn't get paid for a -- he paid 2 me money -- he pay me just that. And plus, yes, I have 3 a -- a paycheck every week from the way which it's my 4 salary. 5 Q. Okay. So I'm just trying to figure out if there 6 are any other sources of pay you received besides the 7 money from Baja -- 8 A. No. No. Just the -- was from Baja. That's the 9 only money. They pay me the money they owe me. 10 Q. Okay. So -- and is all the money that you 11 received from Baja, was all of that money that you had 12 paid Carlos? 13 ALEX LARKIN: Same objection. 14 BY ERICA FRANKLIN: 15 Q. I'm just trying to figure out what -- so I want 16 to make sure I understand. 17 From the payments you -- of the payments you 18 received from Baja, I want to make sure I understand what 19 those payments were for. 20 You told me that some of those payments were 21 from -- were money that you had lent to Carlos. Is 22 anything else? 23 ALEX LARKIN: Object to the form of the 24 question. 25 SARA KINCAID: I'm going to join in that</p>	<p style="text-align: right;">Page 115</p> <p>1 objection. 2 Tony, you can go ahead and answer. 3 THE WITNESS: I -- I didn't understand the 4 last -- so you said the money I received? Yes. I 5 received -- the money I received from Baja is to pay me 6 the money I lent to them, yes. 7 BY ERICA FRANKLIN: 8 Q. Okay. Did you receive any other money from 9 Baja? That's what I'm trying to find out. 10 A. Never. Honor. No. I swear to the -- no. 11 Never. Not one penny. Never. 12 Q. Okay. And did you have any -- so when -- when 13 Baja cut you a check, did you have any role in processing 14 that check? 15 A. Any what -- 16 ALEX LARKIN: Object to the form of the 17 question. 18 JASON WANDLER: I'll join. 19 SARA KINCAID: I'm going to join as well. 20 BY ERICA FRANKLIN: 21 Q. You can answer. 22 A. Can you repeat? When I receive the check? I 23 mean, if I'm giving you a check, pay it. All I did, I 24 grabbed the check. I deposit, you know, in a bank. 25 That's all. That's all.</p>
<p style="text-align: right;">Page 116</p> <p>1 Q. Did you have a role in -- in creating that 2 check? 3 ALEX LARKIN: Same objection. 4 BY ERICA FRANKLIN: 5 Q. Were you involved in that process? 6 SARA KINCAID: Same objection. 7 JASON WANDLER: Join. 8 THE WITNESS: I don't have any role. I don't 9 have anything. No. I don't have nothing. 10 BY ERICA FRANKLIN: 11 Q. Did the amount of money that you received from 12 Baja depend on how many employees Roberto Soto Contreras 13 had? 14 ALEX LARKIN: Same objection. 15 SARA KINCAID: I'll join in that objection. 16 JASON WANDLER: Same for me. 17 THE WITNESS: I don't know how many employees, 18 no. I don't. I don't know how many employees they -- 19 they had on -- I don't. 20 Like I said, I don't have access to it, to his 21 business or with him discuss, you know, personal business 22 between me and him. I -- like I said, I wasn't -- I 23 wasn't part of Baja so I don't know anything. 24 BY ERICA FRANKLIN: 25 Q. Okay. But I'm asking something slightly</p>	<p style="text-align: right;">Page 117</p> <p>1 different which is -- I know you don't know how many 2 employees, but did the amount of employees that he had 3 affect your pay from Baja? 4 ALEX LARKIN: Same objection. 5 JASON WANDLER: Object. 6 BY ERICA FRANKLIN: 7 Q. You can answer. 8 A. Said affect my pay? Baja -- you -- you said the 9 amount of employees he affect me pay? Like I -- I haven't 10 -- I had nothing to do with it -- with Baja. I don't 11 know. 12 Q. Okay. Did -- did anything Mr. Soto did have any 13 effect on the pay that you received from Baja? 14 ALEX LARKIN: Same objection. 15 SARA KINCAID: I'll join. 16 JASON WANDLER: Join. 17 BY ERICA FRANKLIN: 18 Q. You can answer. 19 A. I -- I don't quite understand. 20 Like I said, I don't know anything about Baja or 21 their business. I don't know how much their invoice. I 22 don't know anything. I don't -- believe me, I'm telling, 23 I don't know nothing about Baja. 24 Q. Okay. 25 ERICA FRANKLIN: If -- if we could please pull</p>

<p style="text-align: right;">Page 118</p> <p>1 up the exhibit that I originally marked Exhibit N. And I 2 believe this would be Exhibit 7; is that correct? Okay. 3 If we could mark that as Exhibit 7 and pull it 4 up. Okay. 5 (Deposition Exhibit 7 was marked for 6 identification.) 7 BY ERICA FRANKLIN: 8 Q. Mr. Machado, do you -- have you seen this 9 before? 10 A. Yes. That -- he give me a check for hundred, 11 800. 12 And, like I said, I'm not hiding it. Should be 13 two more wire. One time -- one time I call Carlos. I 14 said, "Carlos, I need the -- the rest of the money." 15 And then he told me, "Tony, why don't you give 16 your account number to Roberto, and I -- and I send you 17 the money?" 18 So he did that, yes. 19 Like I said, he paid everything he owed me. But 20 I -- I mean, I received some statements. I was involved 21 with a -- what's his name -- with Baja. 22 Then sometime they said I would had eight 23 percent. No. It's all fake. It's not true. All it is, 24 he paid me whatever I loaned -- I loaned to him to Carlos. 25 That's all.</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. How did it come to be that this check was for -- 2 it appears this check is for \$4878; is that correct? 3 A. Yeah. 4 Q. And how did -- how -- who came up with that 5 figure? That amount. 6 Do you know who came up with that amount of 7 money? 8 A. No. No. 9 Q. Was it -- did you ask to be paid this amount of 10 money? 11 A. No. I just want to -- him to pay me -- you 12 know, to pay me -- to pay me whatever, you know, he owes 13 me. 14 Q. So, at that point in time, on August 8, 2019, 15 how much money did Carlos owe you? 16 A. August what? 2019? 17 Q. On the date of this check, how much money did 18 Carlos owe you at that time? 19 A. Oh, at that time, I'm pretty sure we were even. 20 And then I -- I lend him more. This is August -- 21 Q. But prior to -- 22 A. -- august -- 23 Q. Prior to you serving this check. 24 A. Yeah. That's August what? Sorry? August 2019; 25 right? This one? Or the '18?</p>
<p style="text-align: right;">Page 120</p> <p>1 Q. '19? 2 A. 2019? I think we were even. 3 Q. Okay. 4 A. I think. 5 Q. How -- how did you know? How do you know? 6 A. Like I said, you know, I did this without 7 malicions or anything. Then I was record everything. 8 For me -- for me, you know, to say something I 9 don't know. This is -- it's been, you know, quite a bit. 10 It's been what? Two years? Three years? I -- you know, 11 sometimes you forget things; but I know, around this time, 12 we were all even when he paid me. 13 And then I got two more which they were wire -- 14 how you call? Wire or something. You got to check, you 15 know, the dates. 16 All I'm saying, everything I lend, he paid me 17 everything. 18 Q. Did you -- when you asked for -- for more -- 19 when you asked him to pay you back, did you specify an 20 amount? 21 A. Sorry? 22 ALEX LARKIN: Object to the form of the 23 question. 24 BY ERICA FRANKLIN: 25 Q. When you reached out to Carlos and asked -- and</p>	<p style="text-align: right;">Page 121</p> <p>1 explained that you needed to be paid back, did you specify 2 an amount? 3 A. No. No. He had me with check. Like I said, I 4 lend him \$3,000. Then a few times, he went grocery 5 shopping. I even pay, you know, with a debit card. 6 That's why lot of times he comes to 50-cents or 75 -- 7 75-cent. 8 The guy told me he's got to get them food. He's 9 got to get them lunch. It's got to get them a house to 10 live. It's got -- you know what I mean? 11 Most of them was all cash. Couple times I was 12 there with my debit card. Get some food -- how do you 13 call that -- at the Safeway. One time at the Safeway, 14 another time at -- it is another store. I can't remember 15 the name. I went to couple stores with him to -- to get 16 them some food. 17 Q. Okay. When you received this check, did you 18 inquire as to why it was for this amount of money? 19 ALEX LARKIN: Object to the form. 20 BY ERICA FRANKLIN: 21 Q. You can answer. 22 A. Yeah. When did I get this check? Can you 23 repeat -- did I what? 24 Q. When you received this check -- 25 A. Yes.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q. -- did you receive this check?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And did you deposit this check?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. When you received it, did you ask anyone</p> <p>6 why it was for \$4878?</p> <p>7 A. No.</p> <p>8 ALEX LARKIN: Same objection.</p> <p>9 THE WITNESS: No. No.</p> <p>10 ERICA FRANKLIN: Okay. Let's go ahead and take</p> <p>11 a break at this point for 40 minutes.</p> <p>12 THE WITNESS: How long?</p> <p>13 ERICA FRANKLIN: Forty.</p> <p>14 THE WITNESS: Forty?</p> <p>15 ERICA FRANKLIN: 4-0.</p> <p>16 THE WITNESS: 4-0. Okay.</p> <p>17 VIDEOGRAPHER: All right. We are now going off</p> <p>18 record. The time now is 11:56 a.m.</p> <p>19 (Recess.)</p> <p>20 VIDEOGRAPHER: We are back on record. The time</p> <p>21 now is 12:44 p.m.</p> <p>22 BY ERICA FRANKLIN:</p> <p>23 Q. Mr. Machado, so I just really have a couple more</p> <p>24 questions for you.</p> <p>25 I just wanted to follow up on our discussion</p>	<p style="text-align: right;">Page 123</p> <p>1 about Carlos Ibarra. Is he -- is he related to Claudia</p> <p>2 Penunuri in any way?</p> <p>3 A. After all this going on, I guess, that's her</p> <p>4 sister.</p> <p>5 Q. I'm sorry. Can you repeat that?</p> <p>6 A. That's her sister.</p> <p>7 Q. Oh, his sister. Okay.</p> <p>8 And how long have you known Carlos?</p> <p>9 A. I met him in 2015. Seven years ago it's going</p> <p>10 to be in April. I met him seven years ago.</p> <p>11 Q. Would you describe him as a personal friend?</p> <p>12 A. Sorry?</p> <p>13 Q. Would you describe him as a friend?</p> <p>14 A. Yes. Like I said, I went there take over for</p> <p>15 somebody. And then, you know, you just go there on a</p> <p>16 daily basis. All you doing -- also my guys doing, I told</p> <p>17 him, you know, so far so good.</p> <p>18 Then time went by. Then he invite me -- I guess</p> <p>19 his mom and dad, they came from Mexico. You know, they</p> <p>20 came here for holidays. And then he -- he told me, "You</p> <p>21 want to come over my house? I'm going to do a barbecue.</p> <p>22 I'm going to introduce you to my mom and dad."</p> <p>23 So I went there. They were nice people. We</p> <p>24 talk. And then they even told me, "Oh, you know, later</p> <p>25 on, if you want to go in holidays, you can" -- I guess</p>
<p style="text-align: right;">Page 124</p> <p>1 they live close to Los Cabos La Paz. And they told me,</p> <p>2 "Anytime you want to come to Mexico for a holiday, you're</p> <p>3 more than welcome, you know, to come to my house."</p> <p>4 But I never went. I never did. So that's</p> <p>5 how -- you know, that's how we start, you know,</p> <p>6 friendship.</p> <p>7 Q. Okay. Did you and Carlos discuss the Baja</p> <p>8 employees who are working at 1120 Denny?</p> <p>9 A. No. No.</p> <p>10 Q. And did you discuss Newway's relationship</p> <p>11 with -- with Baja Concrete with Carlos?</p> <p>12 A. Sorry? Can you repeat? Newway with --</p> <p>13 Q. Did you and Carlos ever talk about Newway's</p> <p>14 and -- Newway Forming and Baja Concrete's business</p> <p>15 relationship?</p> <p>16 A. No. No. Because he already was, you know,</p> <p>17 involved with Newway. So I had no business, you know, to</p> <p>18 talk about it. No.</p> <p>19 Q. Did you and Carlos ever talk about Roberto Soto</p> <p>20 Contreras?</p> <p>21 A. No. No.</p> <p>22 Q. And did you ever talk about the pay that you</p> <p>23 received from Newway?</p> <p>24 ALEX LARKIN: Object to the --</p> <p>25 THE WITNESS: No. No. I mean, that's private</p>	<p style="text-align: right;">Page 125</p> <p>1 business. I -- you know, I just told, you know, you guys</p> <p>2 how much I make. I make -- I never told no one. You</p> <p>3 know, that's my business. That's my private -- you know,</p> <p>4 my privacy.</p> <p>5 BY ERICA FRANKLIN:</p> <p>6 Q. Did -- did you ever discuss how -- how Baja was</p> <p>7 paying its employees with Carlos?</p> <p>8 A. No.</p> <p>9 ALEX LARKIN: Object to the form of the</p> <p>10 question.</p> <p>11 SARA KINCAID: I'll join that objection.</p> <p>12 BY ERICA FRANKLIN:</p> <p>13 Q. You can answer.</p> <p>14 A. No.</p> <p>15 Q. So what is Carlos' role at Baja? What does he</p> <p>16 do for the company?</p> <p>17 ALEX LARKIN: Object to the form of the</p> <p>18 question.</p> <p>19 SARA KINCAID: I'll join that objection.</p> <p>20 BY ERICA FRANKLIN:</p> <p>21 Q. You can answer.</p> <p>22 A. Like, I don't know what -- to me, my knowledge,</p> <p>23 I thought him was the owner -- the shareholder. And then</p> <p>24 all this going on, then I heard it's deceased -- at the</p> <p>25 first, they were saying they live in -- she lives</p>

<p style="text-align: right;">Page 130</p> <p>1 A. Yeah. Yeah. Everybody, they were -- they all 2 were Newway's employee. 3 Connor, he just left Newway not too long ago, 4 and he's working for another company. I guess he wants to 5 become an electrician so he -- he left Newway. 6 Q. Okay. Sorry. Just to be thorough, Padro -- 7 A. Padro, he was a Newway's employee. Yes. 8 Q. And just to clarify something: The various 9 foremen -- the labor foreman, the cement finishing 10 foreman, the other foremen -- if I understand right, they 11 would be supervising Newway's workers -- Newway's 12 employees. 13 A. Yes. 14 SARA KINCAID: Objection to the form of the 15 question. 16 BY ALEX LARKIN: 17 Q. And the same foreman would also be supervising 18 other workers who were not Newway employees; is that 19 correct? 20 SARA KINCAID: Objection to the form of the 21 question. 22 JASON WANDLER: I'll join. 23 SARA KINCAID: You can go ahead, Tony. 24 THE WITNESS: Yes. 25</p>	<p style="text-align: right;">Page 131</p> <p>1 BY ALEX LARKIN: 2 Q. Is it your understanding that the Baja Concrete 3 company that was working on a project in Edmonton that you 4 mentioned -- 5 A. Yes. They are -- they are here in Canada. I 6 guess they start here in Canada. 7 Q. Is it -- is it your understanding that that is 8 the same company as Baja Concrete USA Corp? 9 A. I -- 10 SARA KINCAID: Objection to the form of the 11 question. 12 THE WITNESS: That I don't know. I -- sir, I 13 don't want to answer questions I don't know. 14 BY ALEX LARKIN: 15 Q. Okay. Good. 16 Just checking my notes. Sorry. 17 There's been some discussion about Mr. Soto and 18 about Roberto. To clarify, what is that person's full 19 name? 20 A. I -- all I know -- I -- I only know Roberto. 21 Now we all just going -- going on, "It's Roberto Soto, 22 Soto." That's all I know. 23 Q. Is it your understanding that that person is 24 named in this Seattle wage-claim matter? 25 A. I guess that's -- that's the same guy, yeah.</p>
<p style="text-align: right;">Page 132</p> <p>1 Roberto, yeah. 2 Q. Okay. You've mentioned early on this morning 3 that there might have been six or seven or eight 4 different, I guess, subcontractors or companies doing work 5 at the product site. 6 A. Yes. There were excavators, electricians, 7 plumbings, mechanicals, all kind -- you know, all kinds of 8 trade, yes. 9 Q. Would it be -- 10 A. But -- 11 Q. -- correct to say that all of the work that all 12 of them did was essential to Newway's work? 13 A. No. 14 SARA KINCAID: Objection to the form of the 15 question. 16 JASON WANDLER: I will join that as well. 17 BY ALEX LARKIN: 18 Q. Okay. But you answered no. 19 A. No. They -- I mean, we were our own subtrades. 20 You know, I'm -- I'm a carpenter. You get the plumber. 21 So it's all different companies. All -- it's all 22 different companies. They weren't relate to Newway. 23 Q. Okay. The general contractor is Onni; correct? 24 A. Yes. 25 Q. That's O-n-n-i?</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Yes. 2 Q. Would it be correct to say that all of these 3 different companies -- these subcontractors -- that their 4 work was essential to Onni's work as a general contractor? 5 A. Yes -- 6 SARA KINCAID: Objection to the form of the 7 question. 8 BY ALEX LARKIN: 9 Q. But again you answered -- 10 A. Yes. We all were working on the Onni's, yes. 11 Q. Does -- is it your understanding that Roberto 12 Soto, who I believe is Roberto Soto Contreras, is it your 13 understanding that he is an employee of Baja Concrete? 14 A. I don't know his title. I -- I do not know. 15 Q. The time clock that was put in for the Denny Way 16 project site, where was that time clock actually located? 17 A. It was Newway's office. 18 Q. So each worker who used the time clock would 19 have to go into the Newway's office -- 20 A. Yes. They got -- they got to punch in and punch 21 out. Yes. 22 SARA KINCAID: Tony, I'm sorry. And I'm sure 23 the court reporter will probably second this, too, but if 24 you wouldn't mind waiting until he finishes his question. 25 That way, if we can make any objections, we can; and then,</p>

<p style="text-align: right;">Page 154</p> <p>1 had a lot of safety meetings and you can't remember this 2 exact one. But can we -- can we -- can we safely say that 3 you did attend this meeting? 4 SARA KINCAID: Objection to the form of the 5 question. 6 BY ALEX LARKIN: 7 Q. Please answer the question, though. 8 A. So you asking me if I attend -- attend that 9 meeting? 10 Q. Yes. 11 A. So, if you see my name there, that must be 12 there; right? So, yes, I was there. 13 Q. Okay. Scrolling to the next page, same 14 document. So this is a handwritten 69 in the lower right 15 corner; to the next page, handwritten page No. 70. Again, 16 it appears to be a continuation of the same list. Next 17 page, handwritten page No. 71. 18 How about this company SFS? Is that a company? 19 A. Yes. That's -- that's a company name, I think. 20 I'm not sure, sir. 21 Q. And the next page -- so this will be the 22 handwritten page No. 72; and the next one, 73; next 23 one, 74. And that is the last one. 24 So workers that were provided by Mr. Soto -- 25 Mr. Roberto Soto -- and may have been paid by Baja</p>	<p style="text-align: right;">Page 155</p> <p>1 Concrete, did they attend safety meetings? 2 A. Yes. 3 SARA KINCAID: Objection to the form of the 4 question. 5 BY ALEX LARKIN: 6 Q. If there were any of those workers at the 7 project site on this day when this safety meeting was 8 conducted, they -- they would have attended that meeting; 9 right? 10 SARA KINCAID: Objection to the form of the 11 question. 12 BY ALEX LARKIN: 13 Q. Please answer. 14 A. Yes. But, again, those sheets, they were done 15 by -- what's his name -- the -- the general contractor. 16 So every trade is there. They were the one to -- who 17 provide, you know, the sheets, the paperwork. Not us. 18 Q. Sure. 19 A. Because then we have our own -- I hope they have 20 the records. We have our own safety meetings, and 21 everybody would be signing on our own paperwork. This was 22 once a week, every trade, you know, on site. 23 Q. So we should see on this list here -- shouldn't 24 we see the company name Baja Concrete? 25 SARA KINCAID: Objection to the form of the</p>
<p style="text-align: right;">Page 156</p> <p>1 question. 2 JASON WANDLER: I'll join. 3 BY ALEX LARKIN: 4 Q. But please answer, Mr. Machado. 5 A. I don't know why doesn't -- what's his name -- 6 Baja Concrete paper, you know, their name. I don't know, 7 sir. It's a -- you know, it's out of my control. 8 Q. Yeah. Okay. I think that's enough with that 9 document. 10 Does Onni -- as far as you know, the general 11 contractor, did they keep these documents on file? 12 SARA KINCAID: Objection to the form of the 13 question. 14 THE WITNESS: That -- that I don't know, sir. I 15 cannot -- I don't know. I'm not on their management. I 16 don't know how they run their business. I don't know. 17 BY ALEX LARKIN: 18 Q. Okay. Does Newway Forming keep a copy of these 19 documents on file? 20 SARA KINCAID: Objection to the question. 21 BY ALEX LARKIN: 22 Q. What -- what was your answer? 23 A. I said that I'm fully sure -- I will say, yes, 24 I'm pretty sure they have, you know, all the backup -- you 25 know, all the -- the documentation.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Okay. 2 ALEX LARKIN: I'm going to introduce just one 3 more exhibit. This will be -- what -- number -- please 4 mark as Exhibit 12. 5 (Deposition Exhibit 12 was marked for 6 identification.) 7 BY ALEX LARKIN: 8 Q. Mr. Machado, do you recognize this document? 9 A. Tony, Newway, Tom Grant, Senior PM. Tony 10 Machado, General Foreman. 11 When I start there with what's his name -- with 12 Joe Regal, they put me as a general foreman. And then he 13 left. When he left, I took over -- over his position. 14 Adam Pitt, layout superintendent. Lozado and 15 Connor, which is the safety manager, yes. 16 Q. And at the top, the title of the document, what 17 is that? 18 A. Newway Organization Chart, 1120 Denny Way; 19 right? 20 Q. That's what it looks like. 21 So, again -- so what is your understanding of 22 what is this document? 23 A. I -- I don't know. 24 SARA KINCAID: Objection to the form of the 25 question.</p>

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

EXHIBIT B
TO DECLARATION OF LORNA S. SYLVESTER

BEFORE THE HEARING EXAMINER
OF THE CITY OF SEATTLE

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

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

9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

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2	FOR BAJA CONCRETE USA CORP:	2	
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<p style="text-align: right;">Page 6</p> <p>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.</p>	<p style="text-align: right;">Page 7</p> <p>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</p>
<p style="text-align: right;">Page 8</p> <p>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.</p>	<p style="text-align: right;">Page 9</p> <p>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.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. And do you see near the top of this page 2 where it lists those three project sites that we 3 already mentioned and that says the relevant time 4 period is February of 2018 through August of 2020? 5 Do you see that? 6 A. Yes. 7 Q. Okay. So for this deposition, and when 8 we're asking you questions about these items, we're 9 referring to that as the relevant time period. 10 Now we can move on to Exhibit 2. 11 (Marked Deposition Exhibit No. 2.) 12 Q. (By Mr. Larkin) I will introduce that. 13 Do you see this document? 14 A. Yes. 15 Q. And I think it's two pages or two separate 16 documents that are put together as one. So we're 17 looking at the first page and now the second page. 18 Back to the first page of Exhibit 1, what is 19 this document? 20 A. It's for the 1120 Denny Way project and it's 21 showing our staff. 22 Q. And it looks like it's titled "Newway 23 Organizational Chart," right? 24 A. Yes. 25 Q. So is this correct that, at least maybe</p>	<p style="text-align: right;">Page 11</p> <p>1 during the relevant period of time, this was Newway's 2 chart or an organization chart for that project site? 3 A. Yes. 4 Q. Now I'll just scroll down. There's a list 5 of -- well, let's start near the top. So Tom Grant, 6 Senior PM. 7 Where would you be on this organizational 8 chart? I don't see your name on it. 9 A. I'm on the organizational chart for the 10 company. I'm not on the jobsite. 11 Q. Okay. So for these three project sites, 12 well, primarily 1120 Denny Way, did you say you were 13 familiar with the project sites? 14 A. Yes. 15 Q. Did you visit them -- did you visit that 16 site or those sites, say, regularly when the work was 17 going on? 18 A. I used to in the beginning. 19 Q. Okay. So on this first page of Exhibit 2 20 can you say or are you able to say whether every name 21 that we see on here was a Newway employee? 22 A. Yes. 23 Q. Yes. Okay. 24 And I'll scroll down to page two of the same 25 exhibit. I guess this must just be a slightly</p>
<p style="text-align: right;">Page 12</p> <p>1 different period of time I guess for the same 2 organizational chart, is that correct? 3 A. Yes. It appears to be, yes. 4 Q. And again, all these names that we see on 5 page two, were all of those -- during the relevant 6 time period, at least, were all of those employees of 7 Newway Forming? 8 A. Yes. 9 Q. And here we see it looks like a president 10 and a vice president at the top of this chart, 11 correct? 12 A. Yes. 13 Q. Are those people still with the company? 14 A. Yes. 15 Q. Describe just briefly again, we see foreman. 16 Tony Machado was general foreman. Would you describe 17 just briefly what his duties would have been on this 18 1120 Denny Way project? 19 A. He would have oversaw everybody on that 20 list. 21 Q. Everybody that we see listed on this page? 22 A. Yes. 23 Q. Would he also oversee subcontractors, like 24 other employees there that were not Newway Forming 25 employees?</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I think mostly they delegated that to the 2 leads. 3 Q. Okay. So the leads are the people we see a 4 little bit lower on the chart, right? 5 A. Uh-huh. Yes. 6 Q. If you don't mind, if you could just 7 describe again briefly what does a lead do. I see a 8 carpenter lead, finishing lead, laborer lead. 9 What do leads do? 10 A. They would go to the office in the mornings 11 and they would be instructed where their crews needed 12 to go throughout the building during that day. 13 Q. Okay. For each day would they also direct 14 subcontractors' employees? 15 A. We leave that up to the subcontractors and 16 their oversight staff, their superintendent. But they 17 do work closely with our leads because they do need to 18 know where their crew needs to be and those are 19 morning meetings every day. 20 Q. Okay. So those are morning meetings every 21 day. That's interesting. 22 So would these be morning meetings -- would 23 these be meetings of not only Newway Forming but would 24 you say Baja Concrete workers if they were there and 25 other subcontractors' employees, would they all be</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. And is it fair to say there must have been a 2 lot more than what we see here in these Exhibits 3 and 3 4 we just looked at? 4 A. Yes, there are. 5 Q. Okay. And was there an approval process for 6 these, all these timecards? 7 A. Yes. Tom Grant wouldn't sign the invoices 8 submitted by Baja until we had backup. And that 9 therefore my Canadian office would not pay bills until 10 that was done. 11 So these were -- they wanted everybody to 12 come to the office, clock in. And Roberto Soto 13 Contreras would come in once a week and sit down with 14 Tom Grant and they would go through these. 15 And then Roberto would make his invoice. 16 Q. So Mr. Soto Contreras and Tom Grant would 17 sit down together and review, I guess, all of the 18 timecards for the week, correct? 19 A. Yes. 20 Q. And they would do this every week during the 21 relevant period of time? 22 A. Yes. 23 Q. And then if I understood you correctly, 24 Mr. Soto Contreras would then, with that information, 25 he would prepare Baja's invoices, is that correct?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Yes. 2 Q. Okay. Are there any steps in between that 3 we're leaving out, like a summary of hours worked? 4 A. No, there isn't. 5 Q. Well, you did say there must be a lot more 6 than just the few timecards we see in these Exhibits 3 7 and 4, correct? 8 A. Yes. 9 Q. Maybe we have them. I'm not sure. 10 MR. WANDLER: They have been produced. 11 MR. LARKIN: They were produced? 12 MR. WANDLER: Yes. 13 MR. LARKIN: I think you sent me that. I'll 14 take a look again later. 15 So with that I'll move on to Exhibit 5. 16 (Marked Deposition Exhibit No. 5.) 17 Q. (By Mr. Larkin) I'll scroll down. 18 Do you recognize what we see here? 19 A. Yes. Invoices. 20 Q. Yeah. I see it may be cut off a little bit 21 at the end. Sorry about that. 22 Is it your understanding that this would 23 have been an invoice from Baja Concrete to Newway 24 Forming? 25 A. Yes.</p>
<p style="text-align: right;">Page 20</p> <p>1 Q. Let me scroll through the document because 2 this is 13 pages. We've got Newway Bates stamps on 3 here starting with 2078. 4 And some are upside down. That's how we 5 received them. 6 A. Yes. 7 MR. WANDLER: I promise we didn't do that on 8 purpose. 9 Q. (By Mr. Larkin) I'm scrolling through the 10 whole thing here. 11 It goes down to Bates stamp Newway 2090. 12 I'll scroll back to the top again. 13 So at the top of this, on page one of this 14 Exhibit 5, is that -- that's not an invoice, right? 15 That's a record of payment, right? 16 A. It is. I don't know -- I can't see the 17 invoice, so I'm not sure why the text is smaller but 18 that is one of their invoices, yes. 19 Q. Okay. But this other part of the same page 20 here would have been -- maybe it wasn't, maybe it was 21 related to a different invoice -- but it would have 22 been a record or was a record of Newway's payment to 23 Baja Concrete, right? 24 A. Yes. 25 Q. So again, just to be clear, the way this</p>	<p style="text-align: right;">Page 21</p> <p>1 would work in the overall system, Tom Grant and 2 Mr. Soto Contreras would get together, go through all 3 the timecards, group them, and Mr. Soto would prepare 4 these invoices. 5 So this invoice we see here likely was 6 prepared by Mr. Soto, correct? 7 A. Yes. 8 Q. And then who was responsible for paying the 9 invoices for Newway Forming? 10 A. In the beginning we sent everything to 11 Canada, B.C., FedEx. And then we did a course in 2019 12 in our Canadian office and started using their 13 software and checks were out of our Lynnwood office. 14 Q. So for the first, say, year and a half or 15 two years of these projects, the checks for Newway 16 Forming to Baja Concrete were actually coming out 17 of -- is it the Vancouver office? 18 A. Yes. 19 Q. Is that the headquarters of Newway Forming? 20 A. Yes. 21 Q. Okay. So looking at the second page of 22 Exhibit 5, it looks like maybe there's a match here, 23 the amount listed on the invoice and the amount of the 24 check stub there, is that correct? 25 A. Yes.</p>

6 (Pages 18 to 21)

Page 22	Page 23
<p>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</p>	<p>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</p>
Page 24	Page 25
<p>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.</p>	<p>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,</p>

7 (Pages 22 to 25)

Page 26	Page 27
<p>1 but on that particular jobsite I think it was pretty 2 standard that everybody took lunch at the same time 3 because of the food trucks. 4 Q. Okay. Because of the timing of when the 5 food trucks would come? 6 A. Yes. 7 Q. Can you describe any more -- we talked about 8 it some, but the overall business relationship between 9 Newway Forming and Baja Concrete USA? 10 A. Subcontractor. 11 Q. Baja Concrete being the subcontractor, 12 correct? 13 A. Yes. 14 Q. My next question may have been answered 15 already. Did Newway Forming report the laborers' 16 hours to Baja Concrete? 17 A. No. 18 Q. And is that because -- you described earlier 19 that Tom Grant would sit down with Roberto and they 20 would review and approve the hours and then 21 Mr. Roberto Soto would, I guess, prepare the invoices 22 to be issued by Baja Concrete to Newway Forming? 23 A. Yes. 24 Q. So other than those two sitting down weekly 25 or whenever it was to review all the timecards and</p>	<p>1 approve them, was there any other mechanism in place 2 for Newway Forming to report laborers' hours worked to 3 Baja Concrete? 4 A. I don't understand that. Can you repeat 5 that? 6 Q. Yes, sure. I'm trying to make sure we have 7 the whole picture. 8 So Tom Grant and Roberto Soto would sit down 9 weekly to review the timecards, approve them, and then 10 Mr. Soto would use the results of that approval 11 process to prepare Baja Concrete's invoices to Newway 12 Forming. 13 Was there any other process or mechanism in 14 place by which Newway Forming reported laborers' hours 15 to Baja Concrete? 16 A. No. 17 Q. Did Newway Forming and Baja Concrete agree, 18 say prior to the invoicing being done, did they agree 19 on what the hourly rates were going to be for the 20 workers? 21 And I don't mean their hourly wage yet I 22 mean the fee that Baja Concrete would charge Newway 23 Forming for those hours? 24 A. No. That was already negotiated before they 25 came down from the higher-ups.</p>
Page 28	Page 29
<p>1 Q. And who exactly would be responsible for 2 Newway Forming as far as those negotiations? 3 A. Joe Rigo in our Edmonton office and Carlos, 4 I can't pronounce his last name, Ibarra. 5 Q. Okay. But they were both -- if I understand 6 correctly, you're saying that the hourly rates that 7 Baja Concrete USA charged Newway Forming, Inc. for 8 these project sites in Seattle for labor, those hourly 9 rates were determined by people in Canada? 10 A. Yes. 11 Q. By the people you named? 12 A. Yes. 13 Q. Let me -- I'm still sharing screen. I'll 14 pull up the next exhibit which is Exhibit 6. 15 (Marked Deposition Exhibit No. 6.) 16 Q. (By Mr. Larkin) Again, we're kind of going 17 out of order here if that's okay. 18 I'll scroll through this. It's 16 pages. 19 It's got some Seattle Bates stamps on them but the 20 numbers got cut off a little bit. 21 I'm scrolling through still. There's some 22 handwritten page numbers in the lower right corner, so 23 I'm on 65, 66, 67, 68, 69, 70, on down to page 74. 24 I'll scroll back up. 25 Do you recognize what this document is?</p>	<p>1 A. Yes, I do. 2 Q. What is this document? 3 A. The stand-down site safety. A load was lost 4 and replacing them. 5 MR. WANDLER: I'm going to for the record 6 object as being outside the scope of the 30(b)(6) 7 issues. 8 And I only do that -- and it's okay if 9 Kwynne testifies. I only do that because this may be 10 more from personal knowledge than as a representative 11 of Newway, that she didn't really go back through and 12 look at this issue. 13 And as a 30(b)(6) deponent I want to caution 14 that this may be personal knowledge and not the 15 company's knowledge. There may be more out there. 16 MR. LARKIN: Okay. 17 MR. WANDLER: But you can go ahead. 18 Q. (By Mr. Larkin) So again -- okay, I don't 19 really want to ask about whatever this accident or 20 incident may have been. I'm just asking about this 21 group of documents, what was it used for. 22 I'll scroll down a few pages to where it's 23 more useful today for us. The page that's hand 24 labeled or hand marked as page 63 in the lower right 25 corner, what is this again and what would this be used</p>

<p style="text-align: right;">Page 34</p> <p>1 time period, shouldn't we expect to see Baja Concrete</p> <p>2 listed as the company for some of those dates?</p> <p>3 MR. WANDLER: I'm going to object. It</p> <p>4 assumes facts not in evidence. We can't see all those</p> <p>5 sign-in sheets so we don't know if they signed in as</p> <p>6 Baja.</p> <p>7 But you can go ahead and answer.</p> <p>8 A. They should have signed in as Baja for the</p> <p>9 weekly safety meetings. I don't know why they were</p> <p>10 signing in as Newway. I had two verbal conversations</p> <p>11 with Roberto and three emails questioning this.</p> <p>12 Q. (By Mr. Larkin) Okay. Does Newway Forming,</p> <p>13 you know, whether it's maintained here or in Canada,</p> <p>14 do they have these sign-in sheets stored somewhere for</p> <p>15 other meetings, whether it's a safety --</p> <p>16 A. Yes.</p> <p>17 Q. Sorry. Go ahead.</p> <p>18 A. Yes, we do.</p> <p>19 Q. Where are they stored?</p> <p>20 A. 1133 Lynnwood office.</p> <p>21 Q. Here in Lynnwood, Washington?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 MR. LARKIN: I'm sure we requested these in</p> <p>25 discovery and I don't recall seeing more than what</p>	<p style="text-align: right;">Page 35</p> <p>1 we've just looked at here.</p> <p>2 MR. WANDLER: I believe that they all have</p> <p>3 been produced and I believe the email I sent you last</p> <p>4 week directing you to where those are will show you</p> <p>5 where those are at.</p> <p>6 MR. LARKIN: Thanks, Jason. I'll take</p> <p>7 another look at that.</p> <p>8 MR. WANDLER: And just a heads up, I think</p> <p>9 they're scattered throughout a bunch of documents</p> <p>10 because they're attached to different documents and</p> <p>11 stuff so it's a little convoluted finding them.</p> <p>12 MR. LARKIN: All right. I'm going to move</p> <p>13 on to Exhibit 7.</p> <p>14 (Marked Deposition Exhibit No. 7.)</p> <p>15 Q. (By Mr. Larkin) Again, it's in a goofy</p> <p>16 order but do you recognize this document?</p> <p>17 A. Yes.</p> <p>18 Q. What is this document?</p> <p>19 A. This is Baja's billing backup, their</p> <p>20 invoice.</p> <p>21 Q. Would this have been prepared by Mr. Roberto</p> <p>22 Soto?</p> <p>23 A. Yes.</p> <p>24 Q. And that would have been prepared, as you've</p> <p>25 testified earlier, based on the meetings between Tom</p>
<p style="text-align: right;">Page 36</p> <p>1 Grant and Roberto Soto, correct?</p> <p>2 A. I don't know if it was so much the hours or</p> <p>3 we were questioning the people. And that's why they</p> <p>4 started going through these invoices a little more</p> <p>5 stringently.</p> <p>6 Q. Let me scroll through this first before I</p> <p>7 ask any more. It's about four pages. Newway</p> <p>8 Bates stamp 2158, I think that is, 2159. Yeah, 22 --</p> <p>9 2213, sorry. 2195.</p> <p>10 Would you look at the third page of this</p> <p>11 Exhibit 7. It looks like there's a signature at the</p> <p>12 bottom.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Whose signature is that, if you know?</p> <p>16 A. No, I do not recognize that signature.</p> <p>17 Q. And again, this document, if I understood</p> <p>18 correctly, is a summary of laborers and how many hours</p> <p>19 were reported to have been worked on different days of</p> <p>20 the week, right?</p> <p>21 A. Uh-huh. Yes.</p> <p>22 Q. Thank you. And you just said a moment ago</p> <p>23 something interesting.</p> <p>24 At some point Newway was questioning the</p> <p>25 workers as opposed to hours, am I right?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Employees, yes.</p> <p>2 Q. What do you mean by that? What was Newway</p> <p>3 Forming questioning?</p> <p>4 A. Tom Grant was questioning "How do I know</p> <p>5 who's onsite?" It's actually two twin towers, 44</p> <p>6 floors. "So how do I know who's actually here?" That</p> <p>7 was when he started.</p> <p>8 And so we asked Roberto Soto for a list of</p> <p>9 his employees, and I noticed right off the bat that we</p> <p>10 were missing at least three and questioned him on it.</p> <p>11 Q. Okay. Meaning for at least three employees</p> <p>12 or workers you're saying that names were appearing on</p> <p>13 these summaries for which you did not have timecards,</p> <p>14 is that correct?</p> <p>15 A. This was earlier on. The timecards weren't</p> <p>16 in the picture, I think, until Tom took over in mid</p> <p>17 2019. This is from 2018.</p> <p>18 Q. So prior to the timecards, gosh, how would</p> <p>19 you have verified whether each of these people on</p> <p>20 these summaries had actually been onsite on the days</p> <p>21 recorded? How would you have done that?</p> <p>22 A. I would say that up until about mid 2019</p> <p>23 until Tom Grant took over I don't think these were</p> <p>24 looked at closely.</p> <p>25 Q. Okay. So it wasn't until the company</p>

<p style="text-align: right;">Page 38</p> <p>1 started using the time clock -- that was the moment in</p> <p>2 time, I guess, or point in time where the company</p> <p>3 began to verify whether each of the employees were</p> <p>4 actually onsite, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Scrolling down to the last page of this</p> <p>7 Exhibit 7, is this also -- it's kind of hard to see</p> <p>8 but do you recognize this as also being a shorter</p> <p>9 summary of hours?</p> <p>10 A. I don't -- it looks like maybe a</p> <p>11 supplemental form, maybe somebody they missed or</p> <p>12 something. I'm not sure why there would just be one.</p> <p>13 Q. Do you recognize who apparently signed it at</p> <p>14 the bottom?</p> <p>15 A. I don't recognize the top signature but the</p> <p>16 superintendent at the time was Craig Kuchel.</p> <p>17 Q. Okay. The superintendent employed by Newway</p> <p>18 Forming, correct?</p> <p>19 A. Yes.</p> <p>20 Q. At the top of this page, the fourth page of</p> <p>21 Exhibit 7, clearly it says "Baja Concrete USA</p> <p>22 Timesheet," right?</p> <p>23 A. Yes. It looks like something might have</p> <p>24 been supplemented; maybe they missed billing us for</p> <p>25 somebody. This doesn't look right with just one</p>	<p style="text-align: right;">Page 39</p> <p>1 person on it.</p> <p>2 Q. Okay.</p> <p>3 A. It may be why Craig had to approve it.</p> <p>4 Q. Okay. I'll pull up Exhibit 8.</p> <p>5 (Marked Deposition Exhibit No. 8.)</p> <p>6 Q. (By Mr. Larkin) It looks like this is just</p> <p>7 one page, Exhibit 8.</p> <p>8 Do you recognize this document?</p> <p>9 A. Yes.</p> <p>10 Q. That was "Yes"?</p> <p>11 A. Yes.</p> <p>12 Q. I'm sorry. And again, I think we've seen</p> <p>13 some before but describe what this document is.</p> <p>14 A. This is Baja's billing to Newway.</p> <p>15 Q. Okay. And for this particular -- again,</p> <p>16 this is only a one-page exhibit -- on this particular</p> <p>17 invoice it looks like it relates to the 1120 Denny Way</p> <p>18 project, correct?</p> <p>19 A. Yes.</p> <p>20 Q. So the date -- there's a couple different</p> <p>21 dates but it looks like May 26, 2020, correct?</p> <p>22 A. Uh-huh. Yes.</p> <p>23 Q. Again, this would have been a summary --</p> <p>24 well, based on the summary of hours prepared by or</p> <p>25 agreed to between Tom Grant and Roberto Soto, correct?</p>
<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. And approved -- it looks like, again,</p> <p>3 there's a kind of stamp here in the middle of the</p> <p>4 page. There's an approval there, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that's Newway Forming's approval so that</p> <p>7 it will pay that invoice, correct?</p> <p>8 A. Yes.</p> <p>9 Q. I'm going to stop the share screen. I don't</p> <p>10 think I need Exhibit 9.</p> <p>11 What was Exhibit 9? Since we have it let's</p> <p>12 just take a quick look at Exhibit 9.</p> <p>13 (Marked Deposition Exhibit No. 9.)</p> <p>14 Q. (By Mr. Larkin) I'll scroll through it.</p> <p>15 Let's go back to the first page of</p> <p>16 Exhibit 9. Do you recognize this document?</p> <p>17 A. Yes.</p> <p>18 MR. WANDLER: Just to interject, I'm going</p> <p>19 to object again on the grounds this is outside the</p> <p>20 scope of the 30(b)(6).</p> <p>21 You can certainly answer questions, but I</p> <p>22 just want everybody to be aware this may be personal</p> <p>23 knowledge and not actually the knowledge of the</p> <p>24 company.</p> <p>25 MR. LARKIN: Okay.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. (By Mr. Larkin) So on page one of this</p> <p>2 Exhibit 9, what is this letter? What's your</p> <p>3 understanding of what this is, this document?</p> <p>4 A. This is when the City brought up this</p> <p>5 investigation.</p> <p>6 Q. Okay. And is it correct that this letter --</p> <p>7 I'll click the first page of this document which is</p> <p>8 the beginning of a letter and it's addressed to</p> <p>9 several individuals but also to Newway Forming, Inc.,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. I guess just based on your knowledge, why</p> <p>13 would the City -- well, again, I'm not being very</p> <p>14 careful here. So let me scroll down to the third page</p> <p>15 of this exhibit which has a title of it or a section</p> <p>16 of it called "Notice of Investigation," correct?</p> <p>17 A. Yes.</p> <p>18 Q. So is it your understanding that this was</p> <p>19 the City of Seattle's notice to all of the parties</p> <p>20 listed at the top of page three that it was</p> <p>21 undertaking an investigation in this matter?</p> <p>22 A. Yes.</p> <p>23 Q. And then scrolling down to the next page,</p> <p>24 the fourth page, do you see a section titled "Initial</p> <p>25 Request for Information"?</p>

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<p>1 Newway Forming, since this is a 30(b)(6) deposition 2 and you're speaking on behalf of the company. 3 A. You'll have to clarify that. 4 Q. Oh, that was more just ground rules, not a 5 question. 6 But when I say "you" I'm referring not to 7 you personally but to Newway Forming. 8 A. I understand. 9 Q. Okay. And I know this 30(b)(6) deposition 10 is kind of weird, it's not intuitive. 11 So I want to talk about Baja's business 12 relationship with Newway Forming. Can you please tell 13 me about that business relationship. 14 A. Baja is a subcontractor of Newway Forming. 15 Q. Did Baja and Newway have a formal business 16 relationship? 17 A. Can you elaborate? 18 Q. Was there a formal agreement that Baja would 19 serve as a subcontractor for Newway? 20 A. No. 21 Q. And I think you said before there were no 22 contracts whatsoever between -- written contracts 23 between Baja and Newway, correct? 24 A. Yes. 25 Q. Did Baja provide any service to Newway</p>	<p>1 during the relevant time period? 2 A. Yes. 3 Q. And what service was that? 4 A. Cement finishing. 5 Q. Any other services? 6 A. Labor. 7 Q. Okay. Anything else? 8 A. No. 9 Q. When you say "labor" what do you mean by 10 that? 11 A. Labor work. 12 Q. Did Baja provide people to do work for 13 Newway? 14 A. Yes. 15 Q. And when did the relationship between Baja 16 Concrete and Newway begin? 17 A. Well, they'd worked together in Edmonton and 18 Calgary, Alberta prior to them coming down here. 19 Q. Do you know when they first began working 20 together in Canada? 21 A. No, I don't. 22 Q. And do you know how the relationship between 23 Newway and Baja came about? 24 A. From Canada, no, I don't. 25 Q. So you said that there was no written</p>
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<p>1 agreement stating that Baja would provide a service to 2 Newway. Was there a verbal agreement to that effect? 3 A. Yes. 4 Q. What exactly was the verbal agreement? 5 A. It was between Carlos Ibarra and Joe Rigo in 6 our Edmonton office. 7 Q. Okay. And Edmonton is in Canada, right? 8 A. Yes. 9 Q. Is that your headquarters? 10 A. No. 11 Q. I'm sorry. I think you said where your 12 headquarters were. Could you remind me one more time? 13 A. The headquarters is in Vancouver. 14 Q. Okay. 15 A. And for jobs in Calgary, Alberta and 16 Edmonton. 17 Q. Got it. Did Carlos and Joe Rigo have a 18 personal relationship? 19 A. I don't believe so. 20 Q. Do you know for sure? 21 A. No. 22 Q. Okay. Did Newway ask Baja to incorporate as 23 a company so that Baja could provide a service to 24 Newway? 25 A. No.</p>	<p>1 Q. Okay. Was Newway privy to Baja's 2 incorporation as a company or not? 3 A. I can elaborate the point that Joe Rigo said 4 it was an offhanded comment in Edmonton about Carlos 5 said he wanted to start in the United States and Joe 6 Rigo said "We have jobs in Seattle." 7 That's what I was informed. 8 Q. And did Newway ask Baja to register in 9 Washington in order to work with Newway in Seattle? 10 A. Not to my knowledge. 11 Q. So to your knowledge did Newway essentially 12 bring Baja to Seattle? 13 A. No. 14 Q. Can you elaborate on that, please? 15 A. They said that they wanted to work down 16 here. Maybe not in Washington, maybe it was in 17 Florida. And Joe just offered that "We have projects 18 in Seattle." 19 Q. Okay. Did any individuals at Baja have a 20 personal relationship with any individuals in Newway 21 at any point? 22 A. Yes. 23 Q. And who are those individuals? 24 A. Carlos Ibarra and Tony Machado. 25 Q. Anyone else?</p>

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<p>1 A. No.</p> <p>2 Q. Okay. Can you tell me about the</p> <p>3 relationship between -- the personal relationship</p> <p>4 between Carlos and Tony, please?</p> <p>5 MR. LARKIN: I'll object based on I believe</p> <p>6 this is outside the scope of the 30(b)(6).</p> <p>7 MS. KINCAID: Join.</p> <p>8 Q. (By Ms. Franklin) You can still answer.</p> <p>9 I'll repeat my question.</p> <p>10 Can you tell me about the nature of the</p> <p>11 relationship between Carlos and Tony?</p> <p>12 A. I believe friends for 30 years.</p> <p>13 MR. LARKIN: Same objection.</p> <p>14 And can I just have a standing objection,</p> <p>15 Erica, to any questions about these personal</p> <p>16 relationships among the various people?</p> <p>17 MS. FRANKLIN: Yes, thank you.</p> <p>18 MS. KINCAID: And I'll join the standing</p> <p>19 objection.</p> <p>20 Q. (By Ms. Franklin) You mentioned that Joe</p> <p>21 Rigo at Newway and Carlos Ibarra came up with the</p> <p>22 hourly rate that Newway would pay Baja for labor, is</p> <p>23 that correct?</p> <p>24 A. I believe they asked for a PeopleReady</p> <p>25 invoice, another subcontractor, and based on</p>	<p>1 information on those hourly rates.</p> <p>2 Q. So who is PeopleReady? I'm sorry.</p> <p>3 A. It was our previous skilled trade labor</p> <p>4 company, subcontractor.</p> <p>5 Q. So what you're saying is that Newway, Joe</p> <p>6 Rigo and Carlos agreed to use the same rates that</p> <p>7 Newway was previously paying to PeopleReady?</p> <p>8 A. Carlos presented it and Joe approved it</p> <p>9 based on knowledge of that rate.</p> <p>10 Q. Okay. Was that interaction in person or in</p> <p>11 writing?</p> <p>12 A. Not in writing.</p> <p>13 Q. Okay. Can you describe Newway's</p> <p>14 relationship with Roberto Soto Contreras, please.</p> <p>15 A. He's the subcontractor foreman, a</p> <p>16 superintendent.</p> <p>17 Q. At any point in time has anyone at Newway</p> <p>18 had a personal relationship with Mr. Soto?</p> <p>19 MR. LARKIN: Again, the same standing</p> <p>20 objection.</p> <p>21 MS. FRANKLIN: Right.</p> <p>22 Q. (By Ms. Franklin) You can still answer the</p> <p>23 question.</p> <p>24 A. No.</p> <p>25 Q. Is anyone at Newway still in touch with</p>
Page 52	Page 53
<p>1 Mr. Soto at this point in time?</p> <p>2 A. Not that I'm aware of, no.</p> <p>3 Q. Okay. So you mentioned that Baja provided</p> <p>4 workers to Newway. Did Baja do so at Newway's</p> <p>5 direction?</p> <p>6 MR. WANDLER: I'm going to object to the</p> <p>7 form of the question but you can go ahead and answer.</p> <p>8 A. Would you repeat that?</p> <p>9 Q. (By Ms. Franklin) I'm happy to rephrase.</p> <p>10 Did Newway ask Baja to provide workers?</p> <p>11 MR. WANDLER: Are you asking for like a</p> <p>12 specific number of workers or people to cover a</p> <p>13 specific scope of work? I think that is the confusion</p> <p>14 on our end.</p> <p>15 Q. (By Ms. Franklin) Let me break it up.</p> <p>16 I guess I'll ask my first question first.</p> <p>17 Did Newway ask Baja to provide workers for a specific</p> <p>18 scope of work?</p> <p>19 A. I guess they would have advised Roberto for</p> <p>20 cement finishing duties for that project.</p> <p>21 Q. Did Newway ask Baja to provide a specific</p> <p>22 number of employees?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. How did Newway make this request to Baja to</p> <p>25 provide workers for a certain scope of work?</p>	<p>1 A. Through Roberto Soto.</p> <p>2 Q. And was that a verbal request?</p> <p>3 A. A phone call, yes.</p> <p>4 Q. Okay. And so was this a one-time occurrence</p> <p>5 that Newway requested that Baja provide workers for</p> <p>6 these specific tasks or did Newway make this request</p> <p>7 on an ongoing basis?</p> <p>8 A. Ongoing basis.</p> <p>9 Q. Okay. And did that take place throughout</p> <p>10 the relevant time period, February 2018 through August</p> <p>11 of 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And did Newway inform Roberto how</p> <p>14 many workers he would need at different points in that</p> <p>15 relevant period?</p> <p>16 MR. WANDLER: Objection; asked and answered.</p> <p>17 You can go ahead and answer.</p> <p>18 A. Yes.</p> <p>19 Q. (By Ms. Franklin) Okay. So did workers at</p> <p>20 the relevant worksites who were on Baja's payroll take</p> <p>21 home the same amount of pay as workers on the relevant</p> <p>22 worksites who were not on Baja's payroll?</p> <p>23 A. I don't have any knowledge of their</p> <p>24 payments.</p> <p>25 Q. Was there any sort of relationship between</p>

<p style="text-align: right;">Page 54</p> <p>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.</p>	<p style="text-align: right;">Page 55</p> <p>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</p>
<p style="text-align: right;">Page 56</p> <p>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</p>	<p style="text-align: right;">Page 57</p> <p>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</p>

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<p>1 Newway employees?</p> <p>2 Q. Yes.</p> <p>3 A. Newway employees we use a third party and</p> <p>4 they clock in and out on their phones.</p> <p>5 Q. So was the clock, the time clock, was that</p> <p>6 just for the employees on Baja's payroll?</p> <p>7 A. Yes.</p> <p>8 Q. And what about the timecards?</p> <p>9 A. Yes.</p> <p>10 Q. What about for other subcontractors? Did</p> <p>11 Newway keep track of their time?</p> <p>12 A. We didn't have any irregularities that we</p> <p>13 caught and no.</p> <p>14 Q. So when Tom Grant would sit down with</p> <p>15 Roberto to give him information so Roberto could make</p> <p>16 the invoices, what information did Tom Grant provide</p> <p>17 to Roberto?</p> <p>18 A. Roberto already came with his own</p> <p>19 information. I think that was reported back offsite.</p> <p>20 I don't think there was ever really a</p> <p>21 question about the hours, it was just the people.</p> <p>22 Q. How did Baja know -- how did Newway know</p> <p>23 that there was no question about the hours if it</p> <p>24 wasn't checking the hours?</p> <p>25 A. Would you rephrase, say that again?</p>	<p>1 Q. So you just stated that there was never</p> <p>2 really any question as to whether the hours that Baja</p> <p>3 reported were correct, right?</p> <p>4 A. Yes.</p> <p>5 Q. But did you also state that Newway was not</p> <p>6 independently tracking the hours of workers on Baja's</p> <p>7 payroll?</p> <p>8 A. No. Not independently, no.</p> <p>9 Q. So if Newway was not independently tracking</p> <p>10 that how did Newway know that the hours that Roberto</p> <p>11 was reporting were correct?</p> <p>12 A. Once Tom and he, Roberto, went through it</p> <p>13 the billing was submitted. And there was no questions</p> <p>14 once Tom and he reviewed it.</p> <p>15 Q. So tell me about the scope of that review.</p> <p>16 What exactly were he and Tom reviewing together?</p> <p>17 A. The timecards and the people.</p> <p>18 Q. Did Tom and Roberto use the timecards to</p> <p>19 verify that the number of hours on the Baja invoices</p> <p>20 were correct?</p> <p>21 A. Roberto typically had his own information.</p> <p>22 We just used -- we just used that, I think, to</p> <p>23 cross-reference. They could have had an issue with</p> <p>24 some hours here and there. That wasn't the</p> <p>25 implementation, the reasoning for the time clock.</p>
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<p>1 Q. So if Roberto had a problem he wasn't sure</p> <p>2 exactly how many hours were used, were worked by his</p> <p>3 workers, could he look to Newway's time clock or</p> <p>4 timecard references to check?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So Newway did maintain records, its</p> <p>7 own records that you could check against of how many</p> <p>8 hours people worked?</p> <p>9 A. I mean -- I don't know. I guess I don't</p> <p>10 understand the question.</p> <p>11 Q. So I would assume that if Roberto was able</p> <p>12 to use Newway's timecards and time clock records to</p> <p>13 check how many hours a given worker worked, then those</p> <p>14 time clock and timecard hours in fact showed how many</p> <p>15 hours workers worked, is that correct?</p> <p>16 MR. WANDLER: I'm going to object. It</p> <p>17 mischaracterized the testimony as to what Roberto was</p> <p>18 using the time cards for.</p> <p>19 Q. (By Ms. Franklin) Okay. Maybe we should</p> <p>20 back up a step.</p> <p>21 What was Roberto using the timecards for?</p> <p>22 A. He wasn't using the time -- he always had</p> <p>23 his own billings, this whole time he had his own</p> <p>24 billings. He was keeping track somehow. And that's a</p> <p>25 question for them. I don't know.</p>	<p>1 Q. But you mentioned before that Roberto and</p> <p>2 Tom would look at the time clock and timecard records</p> <p>3 in going over things, right?</p> <p>4 A. After Roberto would bring down his invoices</p> <p>5 then Tom would -- they would cross-reference and make</p> <p>6 sure they matched what we had. But he's always kept</p> <p>7 his own records.</p> <p>8 Q. Okay.</p> <p>9 A. How they got that information I don't know.</p> <p>10 That's a question for them.</p> <p>11 Q. When Baja submitted timesheets with its</p> <p>12 invoices, did somebody at Newway sign off on those</p> <p>13 timesheets?</p> <p>14 A. Every superintendent has to sign off on</p> <p>15 invoices or they won't be paid. We have to approve</p> <p>16 those.</p> <p>17 Q. And what does the superintendent do to</p> <p>18 determine whether or not to sign off?</p> <p>19 A. Peruses them. I don't know how they get</p> <p>20 into them.</p> <p>21 Q. Do they check the hours against Newway's own</p> <p>22 records of worker hours?</p> <p>23 A. We didn't keep track of their hours other</p> <p>24 than these time clock sheets that -- you know, Roberto</p> <p>25 would do his invoice and Tom would just cross</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 66</p> <p>1 A. I have no idea what they paid their 2 employees. So it's an agreed-upon rate, but that was 3 based on PeopleReady. I don't know what they paid out 4 of that to their employees. 5 Q. Did the rate change when Baja workers worked 6 more than 40 hours in a week? 7 A. I never saw the rate change that they billed 8 us. We don't know what their base pay was. We don't 9 know what they included. 10 Q. Okay. But the rate that they billed you did 11 not change? 12 A. No. 13 Q. And did the invoices include money owed to 14 workers for sick time? 15 A. No. That would be on Baja. 16 Q. Did the invoices show that workers on Baja's 17 payroll sometimes worked more than 40 hours per week? 18 A. It was just a set standard hours the way 19 Roberto did it. 20 Q. Did the hours vary week by week? 21 A. Yes. 22 Q. So in a given week if workers did work more 23 than 40 hours, would the invoice show more than 40 24 hours for that worker? 25 A. I didn't look at the timesheet again so I'll</p>	<p style="text-align: right;">Page 67</p> <p>1 have to look at it again. It just shows the flat 2 hours. 3 Q. What do you mean flat hours? 4 A. Eight, nine. 5 Q. If you add up the hours in a given week do 6 they ever total more than 40? 7 A. Yes. 8 Q. Did Newway's own records reflect the fact 9 that workers in fact worked more than 40 hours in a 10 week? 11 A. We don't keep records of subcontractors. 12 Q. Was Baja aware that workers were not being 13 paid time and a half for overtime hours? I'm sorry, 14 was Newway aware that Baja workers were not getting 15 time and a half for overtime hours? 16 MR. LARKIN: Object to the form of the 17 question. 18 A. No. 19 Q. (By Ms. Franklin) Okay. And I just have a 20 little bit about work shifts. 21 Did the hours that workers on the relevant 22 worksites worked, did those vary from day to day 23 during the relevant time period, the number of hours? 24 A. Yes. 25 Q. Who determined how many hours these workers</p>
<p style="text-align: right;">Page 68</p> <p>1 needed to work on a given day? 2 A. That would be up to their superintendent 3 and our lead, I guess. I don't know. 4 Q. But was it always a Newway employee who 5 determined how many hours the workers on the relevant 6 worksites worked? 7 A. No. 8 Q. Can you elaborate on that? 9 A. That would be Roberto Soto. 10 Q. How did Roberto Soto determine how many 11 hours workers needed to work on a given day? 12 A. It was my understanding that it was eight 13 hours every day. And then if there was a concrete 14 pour late then Roberto would tell his people that they 15 need to stay, his employees. 16 Q. How would Roberto know that there was a 17 circumstance requiring additional hours on a given 18 day? 19 A. A lead would tell him. It was voluntary. 20 Q. Would the lead instruct Roberto to offer his 21 workers additional hours on such a day? 22 A. Would you say that again? 23 Q. Would the lead instruct Roberto to offer 24 additional hours to workers on a day where there was 25 something more to be done?</p>	<p style="text-align: right;">Page 69</p> <p>1 A. He could offer them but it's all volunteer. 2 Q. But when he was offering them was it based 3 on information he received from someone at Newway? 4 A. They would regularly ask anybody, when that 5 situation arises, who wants to work. So they would 6 ask Roberto if anybody wants to stay. They don't have 7 to stay. 8 Q. When you say they would ask Roberto, who is 9 "they"? 10 A. A lead. 11 Q. A Newway lead? 12 A. Yes. 13 Q. Was the process the same for workers who 14 were on Baja payroll and Newway payroll of determining 15 how many hours a worker would work in a given day? 16 A. They're their own subcontractor so I mean 17 they can -- they can gauge how many hours they want to 18 work. If we get behind schedule we get behind 19 schedule. 20 Q. If there were extra concrete to be poured, 21 for example, would everyone on the worksite have the 22 opportunity to work extra hours, Baja workers and 23 Newway workers? 24 A. If they wanted to. 25 Q. Okay. How were work schedules communicated</p>

<p style="text-align: right;">Page 78</p> <p>1 A. Yes.</p> <p>2 Q. And did that happen with Baja?</p> <p>3 A. I don't think that ever was an issue.</p> <p>4 Q. So for Baja Newway prescribed the task and</p> <p>5 Baja would do it, is that correct?</p> <p>6 A. If Roberto agreed to it for his people and</p> <p>7 his staff.</p> <p>8 Q. But you said previously you never had an</p> <p>9 issue with Baja rejecting a task from Newway, right?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. So can you describe for me -- and I'm sorry,</p> <p>12 I don't know too much about construction sites -- just</p> <p>13 the duties of a lead for Newway?</p> <p>14 A. They're a foreman.</p> <p>15 Q. Is a lead the same as a foreman?</p> <p>16 A. Essentially.</p> <p>17 Q. Is there a slight difference?</p> <p>18 A. Not in Newway's terminology.</p> <p>19 Q. Okay. So what were the duties -- you told</p> <p>20 me they're basically a foreman, but what were the</p> <p>21 specific duties and tasks of a Newway lead?</p> <p>22 A. They work alongside with the employees but</p> <p>23 they are the head of their unit and they are the ones</p> <p>24 that would check in with the higher-ups.</p> <p>25 Q. Do leads tell their units what to do?</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Newway, yes.</p> <p>2 Q. When you say Newway, did Newway leads tell</p> <p>3 their units -- I guess did they tell subcontractors</p> <p>4 what to do?</p> <p>5 A. Through their superintendents.</p> <p>6 Q. Okay. Was Roberto the superintendent for</p> <p>7 Baja?</p> <p>8 A. Yes.</p> <p>9 Q. Let me think. Just a moment.</p> <p>10 So is there anything else that Newway leads</p> <p>11 were responsible for?</p> <p>12 A. Possibly just making sure people are</p> <p>13 attending the safety meetings, their employees, their</p> <p>14 staff underneath them.</p> <p>15 Q. Were Newway leads responsible for ensuring</p> <p>16 that Baja workers attended the safety meeting?</p> <p>17 A. It's our policy that all subcontractors come</p> <p>18 to the meetings but that would still be instructed</p> <p>19 through Roberto.</p> <p>20 Q. Was there an instruction from Newway to</p> <p>21 Roberto that Baja workers needed to attend those</p> <p>22 trainings?</p> <p>23 A. Yes.</p> <p>24 Q. Did Newway leads supervise the day-to-day</p> <p>25 work of their units?</p>
<p style="text-align: right;">Page 80</p> <p>1 A. Yes.</p> <p>2 Q. What were the duties of Antonio Machado?</p> <p>3 A. He was the main foreman.</p> <p>4 Q. And what was his role in that capacity?</p> <p>5 A. He oversaw -- he worked and he also oversaw</p> <p>6 all the leads.</p> <p>7 Q. Did he give direction to the leads?</p> <p>8 A. Yes.</p> <p>9 Q. And did he play a role in making sure things</p> <p>10 were being done correctly?</p> <p>11 A. Yes.</p> <p>12 Q. And did the leads do that as well?</p> <p>13 A. Yes.</p> <p>14 Q. Did the leads tell workers on Baja payroll</p> <p>15 where they should be stationed throughout the day?</p> <p>16 A. It goes to Roberto and Roberto would tell</p> <p>17 them.</p> <p>18 Q. Okay. When a Baja worker finished a given</p> <p>19 task who instructed him on what to do next?</p> <p>20 A. They would know for the whole day. That</p> <p>21 would be Roberto in the morning having meetings and</p> <p>22 they should know what they needed to do the entire</p> <p>23 day.</p> <p>24 Q. Okay. What would happen if a Newway lead</p> <p>25 noticed that Baja was doing work incorrectly?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I don't know but they would probably tell</p> <p>2 Roberto. Are you mean something simple or egregious?</p> <p>3 Q. Either one.</p> <p>4 A. Okay. If somebody was showing improper</p> <p>5 behavior then Roberto would be called.</p> <p>6 Q. Okay. Was it Newway's job to make sure that</p> <p>7 Baja workers were doing things correctly?</p> <p>8 A. I would still deflect that to Roberto.</p> <p>9 Q. Sorry, go ahead.</p> <p>10 A. It would be deflected to -- I mean explained</p> <p>11 to Roberto and it would be up to them to deal with</p> <p>12 their staff.</p> <p>13 Q. Okay. Was it part of the role of Newway in</p> <p>14 managing its subcontractors to make sure the</p> <p>15 subcontractors were doing things correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Did Roberto have any discretion on what</p> <p>18 tasks his workers would be doing at any given time?</p> <p>19 A. It's still basically following the schedule.</p> <p>20 Q. Well, was that schedule -- when you say the</p> <p>21 schedule do you mean a schedule dictated by Newway?</p> <p>22 A. No. By Onni.</p> <p>23 Q. Okay. So can you please describe Roberto's</p> <p>24 day-to-day interactions with Newway staff? You told</p> <p>25 me about that initial meeting in the morning. Did he</p>

<p style="text-align: right;">Page 90</p> <p>1 disciplined?</p> <p>2 A. Two writeups, on a third, termination.</p> <p>3 Q. And what about Baja workers, was that the</p> <p>4 same process?</p> <p>5 A. We didn't have any control over their</p> <p>6 workers for hiring or firing.</p> <p>7 Q. If a Baja worker needed a writeup, would</p> <p>8 someone from Newway communicate that to Roberto?</p> <p>9 A. I suppose so. It would be Roberto.</p> <p>10 Q. If Roberto fired a worker would Newway be</p> <p>11 notified?</p> <p>12 A. No.</p> <p>13 Q. What about -- I'm sorry, I didn't mean to</p> <p>14 talk over you. Go ahead and finish.</p> <p>15 A. No, go ahead.</p> <p>16 Q. If Roberto disciplined a worker would anyone</p> <p>17 at Newway be notified?</p> <p>18 A. No.</p> <p>19 Q. Okay. So now I want to step back a little</p> <p>20 bit and ask you about the work that was being done on</p> <p>21 this worksite. And again you're going to have to</p> <p>22 excuse me because I don't know much about construction</p> <p>23 work.</p> <p>24 So what was Newway brought on to the</p> <p>25 relevant worksites to do?</p>	<p style="text-align: right;">Page 91</p> <p>1 A. We're concrete highrise subcontractors.</p> <p>2 Q. So what does that mean? What are the</p> <p>3 responsibilities associated with that?</p> <p>4 A. All the concrete to build the building.</p> <p>5 Seaco was in charge of the slabs and we're in charge</p> <p>6 of the vertical.</p> <p>7 Q. Anything else?</p> <p>8 A. No. We're a concrete subcontractor.</p> <p>9 Q. And did Newway have a contract with Onni</p> <p>10 requiring it to do these things?</p> <p>11 A. Yes.</p> <p>12 MR. WANDLER: Just to clarify, the contract</p> <p>13 with Onni we're only talking about the Denny site.</p> <p>14 MS. FRANKLIN: Okay. Thank you for the</p> <p>15 clarification.</p> <p>16 Q. (By Ms. Franklin) Did Newway have any</p> <p>17 contracts for the other two site?</p> <p>18 A. Yes.</p> <p>19 Q. Who were those with?</p> <p>20 A. Graham at 707 Terry and Axiom is 2014</p> <p>21 Fairview.</p> <p>22 Q. Okay. Thanks for that clarification.</p> <p>23 So let's go piece by piece, so let's talk</p> <p>24 about 1120 Denny.</p> <p>25 What was Baja's role relative to -- let me</p>
<p style="text-align: right;">Page 92</p> <p>1 see if I can rephrase that.</p> <p>2 So you said that -- so Baja was the</p> <p>3 subcontractor of Newway, correct?</p> <p>4 A. Yes.</p> <p>5 Q. What was Baja's role in helping Newway with</p> <p>6 the tasks that it was doing for Onni?</p> <p>7 A. Concrete finishing.</p> <p>8 MR. WANDLER: I don't think she got the</p> <p>9 answer.</p> <p>10 A. Cement finishing, concrete finishing.</p> <p>11 Q. (By Ms. Franklin) Okay. Can you just</p> <p>12 explain again -- I'm just not really understanding</p> <p>13 construction -- how did cement finishing fit into the</p> <p>14 job that Newway was being asked to do?</p> <p>15 A. We poured the concrete and they patch it,</p> <p>16 sand it, that kind of thing, build forms to pour the</p> <p>17 concrete in. And then that would be labor force ends</p> <p>18 up finishing.</p> <p>19 Q. Okay. Could Newway have done its job for</p> <p>20 Onni without somebody fulfilling the role that Baja</p> <p>21 was playing?</p> <p>22 A. We have cement finishers on staff.</p> <p>23 Q. But is cement finishing essential to</p> <p>24 Newway's task?</p> <p>25 A. Cement finishing, yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Okay. Now let's talk about the other</p> <p>2 worksites.</p> <p>3 So for the 707 Terry, was Newway's role the</p> <p>4 same in its contract there?</p> <p>5 A. Yes.</p> <p>6 Q. And was Baja's role the same?</p> <p>7 A. They were only brought on for one week, but</p> <p>8 yeah.</p> <p>9 Q. And what were they brought on to do in that</p> <p>10 one week?</p> <p>11 A. I believe labor, which would be setting up</p> <p>12 the forms to pour the concrete in.</p> <p>13 Q. Okay. Is that something that needed to</p> <p>14 happen in order for Newway to complete its tasks at</p> <p>15 707 Terry?</p> <p>16 A. Yes, but we can hire out of the union. We</p> <p>17 can hire PeopleReady. It wasn't imperative that we</p> <p>18 have Baja.</p> <p>19 Q. Okay. And what about 2014 Fairview Avenue,</p> <p>20 was Newway's contractual task the same?</p> <p>21 A. Yes.</p> <p>22 Q. And what about Baja's?</p> <p>23 A. Yes.</p> <p>24 Q. How did it come to be that Baja workers were</p> <p>25 dispatched to 707 Terry?</p>

Page 94	Page 95
<p>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</p>	<p>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?</p>
Page 96	Page 97
<p>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?</p>	<p>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</p>

<p style="text-align: right;">Page 106</p> <p>1 the timesheets as well as the first and also, we are</p> <p>2 going to make an onsite timesheet so they will have to</p> <p>3 come in and check in and check out at the end of the</p> <p>4 day."</p> <p>5 Can you tell me what that's referring to,</p> <p>6 please?</p> <p>7 A. I mean employees coming into the jobsite and</p> <p>8 checking in with them and checking out.</p> <p>9 The form had not been decided about how to</p> <p>10 go about this at that point.</p> <p>11 Q. But you did implement this from -- you did</p> <p>12 implement a system where Baja workers would have to</p> <p>13 check in and check out upon arrival and then upon</p> <p>14 departure, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Let's move on to the next exhibit. I</p> <p>17 believe now this will be Exhibit 14.</p> <p>18 (Marked Deposition Exhibit No. 14.)</p> <p>19 Q. (By Ms. Franklin) Take a moment to review</p> <p>20 this one.</p> <p>21 A. Okay.</p> <p>22 Q. Did you get a chance to look at the email?</p> <p>23 A. I'm at the very bottom. Yes.</p> <p>24 Q. So let's go back to the top.</p> <p>25 So it says "Our employees clock in on their</p>	<p style="text-align: right;">Page 107</p> <p>1 phone but we installed a time clock specifically for</p> <p>2 Baja employees to make sure that they weren't</p> <p>3 overcharging us because their timesheets were very</p> <p>4 vague i.e. several of the first names and no last name</p> <p>5 listed."</p> <p>6 What did you mean by to make sure they</p> <p>7 weren't overcharging you?</p> <p>8 A. For people that weren't onsite.</p> <p>9 Q. And how did you use the time clock to</p> <p>10 ensure -- does this email indicate that you used --</p> <p>11 Newway used the time clock to ensure that they weren't</p> <p>12 being overcharged by Baja?</p> <p>13 A. So we could visually see them and a physical</p> <p>14 body had to come into the office and put that in the</p> <p>15 machine.</p> <p>16 Q. Okay. Let's move on to the next one,</p> <p>17 Exhibit 15.</p> <p>18 (Marked Deposition Exhibit No. 15.)</p> <p>19 MS. FRANKLIN: So this is the last exhibit.</p> <p>20 Can you just go ahead and scroll so she can</p> <p>21 see the exhibit.</p> <p>22 MR. WANDLER: Are these documents that have</p> <p>23 been produced in discovery? Do we have Bates labels</p> <p>24 on them? I just don't --</p> <p>25 MS. FRANKLIN: Well, this one was produced</p>
<p style="text-align: right;">Page 108</p> <p>1 by Newway in native format so I don't believe it does</p> <p>2 have a Bates label on it. This was an attachment to</p> <p>3 an email.</p> <p>4 I will be happy to email counsel separately</p> <p>5 the Bates numbers.</p> <p>6 Q. (By Ms. Franklin) Ms. Grant, did you get a</p> <p>7 chance to see this whole document?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Are you familiar with this document?</p> <p>10 A. No.</p> <p>11 Q. Are you able to, just from looking at it,</p> <p>12 tell me what it is?</p> <p>13 A. I've never seen this before.</p> <p>14 Q. Okay. Well, in that case I think I won't</p> <p>15 ask you about it.</p> <p>16 MS. FRANKLIN: I'm sorry, what?</p> <p>17 MR. WANDLER: Oh, I was just saying it looks</p> <p>18 like it lines up with Alex's Exhibit 1 this morning,</p> <p>19 the same information but just in a different format.</p> <p>20 MS. FRANKLIN: Oh, that's all it was --</p> <p>21 yeah, I think it might be a little different.</p> <p>22 MR. LARKIN: That was Exhibit 2 this</p> <p>23 morning.</p> <p>24 MR. WANDLER: Thanks.</p> <p>25 MR. LARKIN: The organization chart.</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. FRANKLIN: I think it was a bit</p> <p>2 different but maybe we can figure that out.</p> <p>3 THE WITNESS: It is.</p> <p>4 MS. FRANKLIN: That concludes my questions.</p> <p>5 Thank you very much for your time.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 MR. WANDLER: I'm going to ask just a couple</p> <p>8 clarifying questions. It won't take too long.</p> <p>9 E X A M I N A T I O N</p> <p>10 BY MR. WANDLER:</p> <p>11 Q. Going back to the time clock and the</p> <p>12 exhibits that we just went through, I believe it was</p> <p>13 Exhibits 12, 13 and 14, the emails talking about</p> <p>14 bringing in the system to monitor that, was that</p> <p>15 relating to the time clock that you testified about</p> <p>16 earlier, the time clock that you were referring to in</p> <p>17 those emails?</p> <p>18 A. Yes.</p> <p>19 Q. Is that the time clock you were testifying</p> <p>20 to earlier during Alex's questioning?</p> <p>21 A. Yeah.</p> <p>22 Q. And what was the intent of bringing the time</p> <p>23 clock onto the site? Was it to track individual hours</p> <p>24 worked by each individual Baja employee or was it just</p> <p>25 to verify that they were onsite?</p>

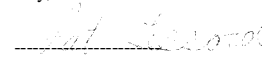

<p style="text-align: right;">Page 114</p> <p>1 him his card with the other two days that the guy had 2 worked and whited out his name on the card. 3 Q. Okay. But again, that whiteout situation 4 only occurred once that you're aware of, correct? 5 A. Yes. 6 Q. And you don't know, you might be 7 speculating, you can't say exactly why that whiteout 8 was done? 9 A. I had a phone call from the site and they 10 thought it was very peculiar and they wanted me to 11 know. And that's the information that was related to 12 me. 13 Q. So it was peculiar, it was irregular? 14 A. Yes. 15 Q. During the relevant time period did Baja 16 Concrete have any equipment at these project 17 worksites? 18 A. I'm not sure about that. They probably 19 would have provided vacuums that they would use. But 20 everybody had somewhat of their own repertoire, you 21 know: Their belts, their safety vests, their hammers, 22 that kind of thing. 23 Q. So certainly the smaller hand tools would 24 be -- I think it's typical on a construction site for 25 most workers to have their own. It's not unusual,</p>	<p style="text-align: right;">Page 115</p> <p>1 right? 2 A. Right. 3 Q. Okay. But as far as any larger equipment, 4 Baja Concrete didn't have any larger equipment on 5 these worksites, correct? 6 A. I don't believe so. 7 Q. Did Baja Concrete -- again, during the 8 relevant time period -- did they have an office at any 9 of these three project worksites? 10 A. No. 11 Q. Did they have any facility at all? Did they 12 have a desk of their own at these project worksites? 13 A. No. 14 Q. I just wanted to clarify one thing to make 15 sure we're clear on the record. Newway Forming, 16 Incorporated is a Washington company, correct? 17 A. Yes. 18 Q. And that's a separate business entity than 19 Newway Forming in Canada, correct? 20 A. Yes. 21 Q. So the headquarters for the Washington 22 company, that's in Lynnwood, Washington? 23 A. Yes. 24 Q. And the headquarters of the Canada Company 25 is in Vancouver?</p>
<p style="text-align: right;">Page 116</p> <p>1 A. Burnaby. 2 Q. Oh, Burnaby. British Columbia, correct? 3 A. Yes. 4 Q. Okay. And are you aware that Baja Concrete 5 USA is actually a Florida entity but also registered 6 in Washington? Are you aware of that? 7 A. I saw the address on the invoices, yes. 8 Q. And is it your understanding that that 9 business entity is a different business entity than a 10 Baja Concrete in Canada? 11 A. Yes. 12 Q. I think you mentioned this morning that a 13 third party safety writer did not know the difference 14 between Baja employees and Newway employees, is that 15 correct? 16 A. Yes. 17 Q. And would you have any idea why a third 18 party safety person would not know the difference? 19 A. He wouldn't know the difference of any of 20 our subcontractors' employees. 21 Q. Okay. 22 A. So people just started showing up and 23 attending the meetings and he didn't think he needed 24 to say "These work for Newway." 25 Q. Is it your understanding that Baja Concrete</p>	<p style="text-align: right;">Page 117</p> <p>1 USA Corp. is a for-profit business? 2 A. Yes. 3 Q. And since it's your understanding that it's 4 a for-profit business wouldn't it kind of make sense 5 that when they invoice Newway Forming for hours the 6 hourly fee or hourly rate shown would be a higher rate 7 than what they might be paying to actual employees? 8 A. I don't know what they're paying their 9 employees. 10 Q. Oh, I know that. 11 A. I assume, but that's just an assumption. 12 Q. Did Newway Forming benefit from the labor 13 provided by Baja Concrete? 14 A. I don't really know. Can you elaborate on 15 that? We benefited that we got the job done. 16 Q. Yes. Sure. 17 A. Okay. 18 Q. And presumably that -- well, not only Newway 19 but also the general contractor for each of these 20 sites must have benefited from the labor provided by 21 Baja Concrete? 22 A. Yes. 23 MR. LARKIN: Okay. That's all I have. 24 Thank you. 25</p>

30 (Pages 114 to 117)

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<p style="text-align: right;">Page 122</p> <p>1 Q. And as long as Newway stayed on track with 2 Onni's schedule did it have any discretion as to the 3 order in which to do different steps? 4 A. That's -- I would assume so. I mean that's 5 up to Tom and Tony and I don't know. 6 Q. Would those decisions get communicated to -- 7 the decisions of Tom and Tony about the order in which 8 to do different steps, would those decisions get 9 passed down to subcontractors? 10 A. I would say yes. 11 Q. Okay. And now I want to just return very 12 briefly to the discussion of the time clocks. 13 You said that the purpose of installing the 14 time clocks was just to get a record of which Baja 15 employees were onsite on a given day, correct? 16 A. Yes. 17 Q. But those time clocks did give you the 18 ability to verify how many hours a given employee had 19 worked, if you had wanted to do so, right? 20 A. Roberto still had his own invoices. We 21 could cross-reference them. 22 I don't think there was ever a question 23 about hours that I can recall. 24 Q. But if there were, could you cross-reference 25 invoices against the records from the time clocks and</p>	<p style="text-align: right;">Page 123</p> <p>1 timecards? 2 A. Yes. 3 MS. FRANKLIN: Okay. I don't have any 4 further questions. Thank you. 5 MR. WANDLER: Are we done? 6 MR. LARKIN: No further questions for me. 7 MS. KINCAID: Nothing for me. 8 MR. WANDLER: We'll reserve signature. 9 (Deposition recessed at 12:35 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 124</p> <p>1 SIGNATURE 2 I declare under penalty of perjury under the 3 laws of the State of Washington that I have read my within 4 deposition, and the same is true and accurate, save and 5 except for changes and/or corrections, if any, as indicated 6 by me on the CHANGE SHEET flyleaf page hereof. 7 Signed in _____, Washington, 8 this _____ day of _____, 2022. 9 10 11 12 KWYNNE GRANT 13 Taken: May 5, 2022 14 15 16 17 18 19 20 21 22 Re: Appeal of Baja Concrete 23 Cause No.: LS-21-002, 003, 004 24 Pat Lessard, CCR 2104 25</p>	<p style="text-align: right;">Page 125</p> <p>1 CERTIFICATE 2 STATE OF WASHINGTON) 3) ss. 4 COUNTY OF KING) 5 I, the undersigned Washington Certified Court 6 Reporter, hereby certify that the foregoing deposition upon 7 oral examination of KWYNNE GRANT was taken stenographically 8 by me on May 5, 2022 and transcribed under my direction; 9 That the witness was duly sworn by me pursuant to 10 RCW 5.28.010 to testify truthfully; that the transcript of 11 the deposition is a full, true, and correct transcript to 12 the best of my ability; that I am neither attorney for nor 13 relative or employee of any of the parties to the action or 14 any attorney or counsel employed by the parties hereto, nor 15 am I financially interested in its outcome. 16 I further certify that in accordance with 17 CR 30(e) the witness was given the opportunity to examine, 18 read and sign the deposition within 30 days upon its 19 completion and submission, unless waiver of 20 signature was indicated in the record. 21 IN WITNESS WHEREOF, I have hereunto set my hand this 22 12th day of May, 2022. 23  24 Pat Lessard, 25 pat@court-reporter.com</p> 

32 (Pages 122 to 125)

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EXHIBIT

7

Forler-Grant
5/5/2022
Pat Lessard, CCR

1120 Dring's Way

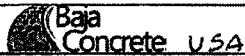
Work Period: *03/23/2020 - 03/28/2020* Pay Date: *03/25*

NAME: *Baja Concrete*

NAME	SUNDAY	MONDAY <i>03/23</i>	TUESDAY <i>03/24</i>	WEDNESDAY <i>03/25</i>	THURSDAY <i>03/26</i>	FRIDAY <i>03/27</i>	SATURDAY <i>03/28</i>
<i>Jose Acosta</i>		8	8	8			
<i>Gerardo Valencio</i>		8.5	8	8			
<i>Gabriel Ortiz / Carpenter</i>			8	8			
<i>Roberto Hiraldo / Carpenter</i>			8	8			
<i>Jose Estrada</i>		8	8	8			
<i>Gerardo Suarez</i>		8	8	8			
<i>Miguel Alfaro</i>		8	8	/			
<i>Noe Rios</i>		8	8	8			
<i>Patricio Fernandez</i>		8	8	8			
<i>Manuel Camus</i>		8	8	8			
<i>Marco Polo Villaverde</i>		8	8	8			
<i>Roberto Lopez</i>		8	8	8			
<i>Marques Viveros</i>		8	8	8			
<i>Raul Hiraldo</i>		8	8	8			
<i>Julio Caballero</i>		8	8	8			

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NEWWAY-002158



Work Period:

Pay Date:

DATE 7/11/08
NAME

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
Labourers	Comments	Comments	Comments	Comments	Comments	Comments	Comments	
Claudio Gamboa		10 Shore	12 concrete	10 concrete	12 concrete	13 concrete	12 Striping	69
Alejandro Fiol		10 Striping	10 Shore	10 Clean	9 Clean	6 Striping	8 Striping	53
Lucas Ayala		10 Shore	10 Shore	10 Striping	10 Clean	13 Striping	8 Striping	61
Matias Rodriguez		10 Shore	11 Shore	10 Clean	10 Clean	13 Striping	17 Concrete	66
Camilo Diaz		10 Shore	10 Shore	10 Clean	10 Clean	13 Striping	8 Concrete	61
								310

DATE -->

Pay Date:

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
Cement Finishers	Comments	Comments	Comments	Comments	Comments	Comments	Comments	Total
Noe Rios		9 Patching	9 Patch	9 Patching	9 Patching	11 Patching	4 Patching	51
Cristian Navejas		9 Chipping	9 Grading	9 Chipping	9 Chipping	11 Chipping	4 Chipping	51
Ivan Parra		9 Chipping	9 Chipping	9 Chipping	9 Chipping	11 Chipping	4 Patching	51
David Giron		9 Chipping	9 Grading	9 Chipping	9 Patching	11 Patching	4 Chipping	51
								204

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NEWWAY-002213

1999

George W. W.

13/08/18

[illegible]

Craig Buckner

8/27/2018

From: [Kwynne Grant](#)
To: jconcrete99@gmail.com
Cc: [Tom Grant](#); [Adam Pilling](#); [Connor Forler](#)
Subject: Employees for Baja
Date: Wednesday, September 18, 2019 10:58:03 AM
Attachments: [image001_9c9da7f2-6ad5-4948-848a-354f8c9b3e31.png](#)



Hi Roberto -

As you might be aware of, we have two new supers/managers at the 1120 Denny Way site. Could you please begin to enter your employees last names on the time sheets as well as the first and also, we are going to make an onsite timesheet so they will have to come in and check in and checkout at the end of the day. Once we receive their full name we will complete the form.

Let us know if you have any questions.

Thank you.

Sincerely,

Kwynne Grant
Project Coordinator

Newway Forming, Inc.
1133 164th Street, SW, Suite 204, Lynnwood, WA, 98087
Phone: 425-742-2709 Fax: 425-745-5818 Cell: 206-391-2994
Email: kwynne@newwayforming.com
Website: www.newwayforming.com



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

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
30 (b) (6)

April 26, 2022

Taken Remotely via Zoom

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

Page 18	Page 19
<p>1 And I believe also Newway Forming was keeping 2 track of the hours on the side. And they were just -- 3 they were having a time card there measuring that. 4 Is that your question? 5 Q Yes. 6 At any point, did the workers switch from using 7 time cards to using a time clock? 8 A You're asking if they switched from a time card to a 9 time clock? 10 Q That's correct, to record their hours. 11 A Well, I really don't know. That would be a question 12 for Roberto Soto, I guess, or somebody that was on the 13 site. 14 Q Okay. Did Baja review worker time cards? 15 A Never. 16 Q Did Baja review any time card records? 17 A Never. 18 Q How do you know that Mr. Soto was tracking worker 19 hours? 20 A He was providing to Baja for payroll a summary of each 21 employee with the hours worked and with the amount 22 of -- the amount of the money that should be on the 23 paycheck or whatever. You know, he would do all of 24 the -- a very good summary, putting hours and putting 25 in detail. If there was bonus, if there was whatever,</p>	<p>1 he would put all of that in there. 2 And that's what Baja used through Mercedes 3 Accounting. Mercedes Accounting was running the 4 payroll, and so that was provided to Mercedes 5 Accounting for them to run the Baja -- 6 (Claudia Penunuri joined the 7 deposition.) 8 Q (By Ms. Franklin) Okay. 9 MS. FRANKLIN: I think we have a 10 little bit of feedback. 11 THE COURT REPORTER: Could we go off 12 the record? 13 MS. FRANKLIN: Sure. Let's go off 14 the record for a moment. 15 (Discussion held off the 16 record.) 17 Q (By Ms. Franklin) So you mentioned that Roberto Soto 18 Contreras was keeping track of worker hours for Baja. 19 Is that something that Baja asked Roberto to do? 20 A Roberto Soto was an independent contractor, and he was 21 doing totally on his own, all of this and that. That 22 started since the very moment was hired by Baja. He 23 would do the whole thing. The whole hiring, the whole 24 thing. He will do it on his own. 25 Q How did Baja make sure it was getting what it needed</p>
Page 20	Page 21
<p>1 from Mr. Soto? 2 A That summary. He would provide a summary. He would 3 provide a summary of the workers and he would provide 4 W-4s and everything so Mercedes Accounting can run the 5 payroll. 6 Q Did Baja indicate to Mr. Soto what it needed from him 7 for each worker? 8 A Could you clarify that question? 9 Q Sure. 10 Did Baja tell Roberto Soto what information it 11 needed Mr. Soto to provide to Baja? 12 A What Mr. Soto needed to provide to Baja? 13 You see, the way I understand it is that this is 14 coming from Canada. These people will know -- they 15 all work together or friends in Canada in the company 16 there. There is a Canadian company that Roberto -- 17 Roberto is from Canada, and they kind of make the 18 deal, I guess. That's what I understand. I wasn't 19 there. 20 And so through -- that they organize the Baja 21 Concrete USA here in the USA to provide the labor for 22 Newway Forming. So this was very independent since 23 Canada. 24 So it was in a way -- Newway Forming also has a 25 company in Canada, I understand. So the Canadian</p>	<p>1 company there, plus Mr. Machado, plus they were all -- 2 I guess, knew each other there. And there was a need 3 of labor for the one here in the USA, for Newway 4 Forming USA, and they probably make the agreement over 5 there. The agreement that they had. And this is the 6 beginning of the whole thing. 7 So that's why Roberto Contreras is totally 8 independent from Baja Concrete. He has nothing to do 9 with Baja Concrete. It was never -- it was just 10 providing us the information for the workers. 11 Q Okay. Would you agree -- 12 A And we hire Mercedes Accounting to process the 13 payroll. 14 Q Okay. Would you agree that Mr. Soto is providing a 15 service to Baja? 16 A A service to Baja? I always -- I always see him as a 17 person, a part of Canada because he belongs to a 18 Canadian company. So if he's a Canadian company, he's 19 independent. 20 Q Did Baja have another way to review -- to track worker 21 hours other than Mr. Soto? 22 A Baja, no. He would provide everything. Roberto would 23 provide all of the information to us and to Mercedes 24 Accounting for the payroll. 25 Q How did it come to be that Roberto started providing</p>

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

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<p>1 to be independent contractors."</p> <p>2 Did Baja consider the workers on Attachment B to</p> <p>3 the determination to be employees or independent</p> <p>4 contractors?</p> <p>5 A In the Exhibit B, that's the Excel?</p> <p>6 Q Yes.</p> <p>7 A Okay. Baja is -- included there some employees of</p> <p>8 Baja. There are some others that are not Baja.</p> <p>9 Q Okay. Did Baja consider Roberto Soto Contreras to be</p> <p>10 an independent contractor?</p> <p>11 A Yeah, he was on his own.</p> <p>12 Q What were Baja's policies with respect to retaining</p> <p>13 individuals that it considers to be independent</p> <p>14 contractors?</p> <p>15 A I'm sorry. Could you repeat the question?</p> <p>16 Q Sure.</p> <p>17 What were Baja's policies about retaining</p> <p>18 individuals that it considers its independent</p> <p>19 contractors?</p> <p>20 A Well, there was not independent contractors. The only</p> <p>21 person on his own was Roberto, and Roberto worked for</p> <p>22 a Canadian company, was sent here. Baja Concrete will</p> <p>23 pay the Canadian company. Sometimes Baja Concrete</p> <p>24 will give advances to Roberto, and the Canadian</p> <p>25 company will be paid by Baja Concrete USA there and</p>	<p>1 they will pay Roberto. So Roberto was not really an</p> <p>2 independent contractor for Baja Concrete. It's coming</p> <p>3 from Canada.</p> <p>4 Q But the payment for Roberto was coming from Baja</p> <p>5 Concrete USA Corp.; correct?</p> <p>6 A Baja Concrete USA will pay the Canadian company. And</p> <p>7 sometimes -- sometimes Claudia will give an advance</p> <p>8 for a reason, justifiable reason to Roberto that was</p> <p>9 then deducted from the bill from the Canadian company.</p> <p>10 The Canadian company was billing Baja Concrete USA.</p> <p>11 Q Okay. Let's move on to Topic No. 6, which is,</p> <p>12 "Relationship between Newway Forming and Baja,</p> <p>13 including any formal relationship memorialized in</p> <p>14 writing, the manner in which information about wages</p> <p>15 and hours were exchanged between the two businesses,</p> <p>16 the origins of the relationship, and the current</p> <p>17 status of the relationship."</p> <p>18 Did Baja and Newway have a formal relationship?</p> <p>19 A Baja and Newway have a formal relationship? What do</p> <p>20 you mean by that?</p> <p>21 Q Well, actually, let me back up.</p> <p>22 Can you describe the relationship between Baja</p> <p>23 and Newway, please.</p> <p>24 A It's just an agreement to provide labor and Newway</p> <p>25 paying for the labor at the rate that was agreed by</p>
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<p>1 them.</p> <p>2 Q Was that relationship ever memorialized in writing?</p> <p>3 A I'm sorry. Could you repeat?</p> <p>4 Q Sure.</p> <p>5 Was that relationship memorialized in writing at</p> <p>6 all?</p> <p>7 A I never saw anything in writing, no.</p> <p>8 Q Are there any contracts between Newway and Baja?</p> <p>9 A No.</p> <p>10 MR. LARKIN: Objection. It's vague.</p> <p>11 I'm sorry.</p> <p>12 When you say "contracts," you mean written or --</p> <p>13 Q (By Ms. Franklin) Written contracts.</p> <p>14 Were there any written contracts between Baja and</p> <p>15 Newway?</p> <p>16 A I haven't seen any written contracts between Baja and</p> <p>17 Newway.</p> <p>18 Q Okay.</p> <p>19 A But we have the invoices. We have the payments. It</p> <p>20 shows proof that there was an agreement.</p> <p>21 Q Is there anything else that shows proof that there was</p> <p>22 an agreement?</p> <p>23 A I don't recall anything else right now.</p> <p>24 Q Did Baja and Newway have a specific agreement about</p> <p>25 the amount of money that would flow between the two</p>	<p>1 entities?</p> <p>2 A You mean Baja and Newway Forming had it in writing, an</p> <p>3 agreement between the rates to pay?</p> <p>4 Q Or just an agreement at all.</p> <p>5 A I believe so, and I always will -- Claudia -- I mean,</p> <p>6 there was a suggestion to have it in writing, but I</p> <p>7 understood Newway Forming didn't want to do it in</p> <p>8 writing.</p> <p>9 Q What makes you think there was an actual agreement, if</p> <p>10 it wasn't in writing?</p> <p>11 A Because the invoices, because the amount they were</p> <p>12 paying, because -- you know, Roberto Contreras will</p> <p>13 say there was an agreement, whatever. They were paid.</p> <p>14 They were paying. So, obviously, there was an</p> <p>15 agreement and they were receiving the labor.</p> <p>16 Obviously, it was an agreement for those rates. And</p> <p>17 Baja tried to negotiate a different agreement and to</p> <p>18 have it in writing, but it was not possible.</p> <p>19 Q When did individuals who were working for Newway first</p> <p>20 come into contact with individuals working for Baja?</p> <p>21 A I'm sorry. Erica, can you repeat again?</p> <p>22 Q Sure.</p> <p>23 MR. LARKIN: Could you clarify, to</p> <p>24 be clear, when you you're talking about Newway, you're</p> <p>25 talking about the U.S. entity; right?</p>

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

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<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 Well, Newway Forming was providing a lot of projects.</p> <p>5 They needed a lot of labor. Baja Concrete is not a</p> <p>6 big company, you know.</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 You mean Carlos --</p> <p>10 Q Penunuri.</p> <p>11 A I believe they are friends or business related, at</p> <p>12 least.</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 Baja personal relationship with anyone at Newway? Not</p> <p>4 that I know.</p> <p>5 Q Okay. Can you describe the current relationship</p> <p>6 between Baja and Newway, please.</p> <p>7 A The current one? It's a legal matter now.</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 I believe there is none.</p> <p>12 Q Are Baja personnel currently in contact with Newway</p> <p>13 personnel?</p> <p>14 A I'm sorry. Is Baja what?</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 I don't know they are still there, but I know some of</p> <p>19 the workers stopped working through Baja and they went</p> <p>20 to work for Newway.</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 Not that I know.</p> <p>25 Q Did Newway ever send Baja workers to worksites other</p>
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<p>1 than the 1120 Denny Way worksite?</p> <p>2 A I mean, did Newway send -- I'm sorry. Could you</p> <p>3 repeat the question?</p> <p>4 Q Did Newway ever send Baja workers to worksites other</p> <p>5 than 1120 Denny Way?</p> <p>6 A Well, Roberto would know that better than me. But</p> <p>7 through the invoices, I think there were several</p> <p>8 sites.</p> <p>9 Q Okay. And did Baja workers work at several sites with</p> <p>10 Newway Forming?</p> <p>11 A Who? Could you repeat again?</p> <p>12 Q Did Baja workers work at several different sites with</p> <p>13 Newway Forming?</p> <p>14 A Did Baja workers -- you mean Baja -- that was on the</p> <p>15 payroll.</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 I think so. I think there was more than one site.</p> <p>19 Not very many, but there were more than one.</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>

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<p>1 Q Yes.</p> <p>2 A Baja paying Newway. Let me see. I don't recall</p> <p>3 anything of Baja paying Newway. It's Newway paying</p> <p>4 Baja.</p> <p>5 Q Okay. During the relevant period, did money ever flow</p> <p>6 from Baja to specific Newway employees?</p> <p>7 A Through the payroll. Through the pay stubs. That was</p> <p>8 the only way employees were paid.</p> <p>9 Q I'm asking about Newway employees. I'm asking about</p> <p>10 money --</p> <p>11 A Oh.</p> <p>12 Q -- from Baja to specific Newway employees.</p> <p>13 A Oh, no. No. No. As far as we know, no employees of</p> <p>14 Newway were in this payroll. Only Baja employees.</p> <p>15 And Roberto will report employees that were to be paid</p> <p>16 by Baja payroll.</p> <p>17 MS. FRANKLIN: Okay. I would like</p> <p>18 to open another exhibit now. I've marked this one as</p> <p>19 F in my internal markings. So I would like to mark</p> <p>20 this as Exhibit 7, please.</p> <p>21 (Exhibit No. 7 marked for</p> <p>22 identification.)</p> <p>23 MS. FRANKLIN: And if you can just</p> <p>24 scroll down. I think it's just a one-pager.</p> <p>25 Q (By Ms. Franklin) Ms. De Armas, are you familiar with</p>	<p>1 this document?</p> <p>2 A Yes, I am.</p> <p>3 Q And can you tell me what it is, please?</p> <p>4 A That was a check that Claudia was out of the country</p> <p>5 and Antonio Machado needed because there was a loan --</p> <p>6 Antonio Machado gave to Baja Concrete in Canada.</p> <p>7 There was a loan there at that time. I don't know too</p> <p>8 much about it because that happened in Canada way</p> <p>9 before me. But I know there was a payment of a loan</p> <p>10 that he gave to Baja Concrete, and then he got paid.</p> <p>11 As you noticed, that's not a pay stub. And</p> <p>12 because she wasn't there, Claudia would write the</p> <p>13 checks, right, and she wasn't available. There was no</p> <p>14 check.</p> <p>15 Then we -- our payroll system can write checks to</p> <p>16 people. And then we issued this for him because he</p> <p>17 needed the thing it says, "Receipts pending." That</p> <p>18 means it was, like, an emergency reimbursement thing.</p> <p>19 But I believe it was a loan.</p> <p>20 Q And was it a loan from Baja or --</p> <p>21 A Antonio Machado gave a loan to Baja.</p> <p>22 Q Okay. Was it a loan to Baja or to Baja as an entity?</p> <p>23 A Well, it was not Baja USA. That was a loan that</p> <p>24 Antonio Machado gave Carlos and the people in Canada,</p> <p>25 I don't know exactly how that worked. And so</p>
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<p>1 apparently Baja was paying him a portion of the loan</p> <p>2 or whatever it was.</p> <p>3 Q Did this check -- was it cut out of Baja, the company</p> <p>4 in Canada, or the Baja Concrete USA Corp.?</p> <p>5 A No, that's not Baja Concrete USA.</p> <p>6 Q Was there a loan made to Baja Concrete USA or a loan</p> <p>7 made to Baja Concrete in Canada?</p> <p>8 A Well, we're talking about Carlos; right? And then</p> <p>9 that would be charged to be a receivable of Baja</p> <p>10 Concrete when we pay Machado because that's not a debt</p> <p>11 for -- Baja Concrete USA owes to Antonio Machado.</p> <p>12 Antonio Machado owes Carlos.</p> <p>13 And so it was promised through Baja Concrete USA</p> <p>14 because Claudia was not available. Nobody is going to</p> <p>15 be wiring funds or whatever the way he was getting</p> <p>16 paid that loan. I didn't see anything. This is the</p> <p>17 only thing that I remember a check that was issued.</p> <p>18 And that was because Claudia was not available, and he</p> <p>19 really needed to get paid.</p> <p>20 So that was part of the loan. It's a loan</p> <p>21 payment.</p> <p>22 Q Does Baja normally -- if it cut the check to an</p> <p>23 individual, does it request documentation to</p> <p>24 substantiate the amount owed?</p> <p>25 A Yes. But that check was requested by Claudia to give</p>	<p>1 it to him. She was in, I don't remember, Mexico or</p> <p>2 Honduras. I don't remember. And then she requested</p> <p>3 that and then we just help her out.</p> <p>4 Q What was -- was her request verbal or in writing?</p> <p>5 A That was just a request to pay that loan or whatever</p> <p>6 it was, you know. But that was not a debt for Baja</p> <p>7 Concrete USA. That's a debt, right, that needed to be</p> <p>8 charged directly out of the company. But the check</p> <p>9 was written with the purpose that he would get the</p> <p>10 funds. It's kind of weird. It's the only thing -- I</p> <p>11 believe it's the only check that existed, the only</p> <p>12 one. It's only this one.</p> <p>13 Q So Baja Concrete USA Corp. paid Machado for a debt</p> <p>14 that didn't really belong to Baja Concrete USA Corp.;</p> <p>15 is that right?</p> <p>16 A Yeah. But Claudia requested the check because it was</p> <p>17 an emergency or something. She was not in the</p> <p>18 country, so -- and apparently he needed the money. So</p> <p>19 he was paid.</p> <p>20 That's a loan that indirectly -- that's a loan</p> <p>21 that is indirectly -- you know, this is related to</p> <p>22 Baja Concrete Canada Ltd. because the loan was given</p> <p>23 to Carlos in Canada, Baja Concrete Ltd. Okay.</p> <p>24 And so they requested that check to be able to</p> <p>25 pay him and then we will do any journal entry</p>

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

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<p>1 Q And so was Claudia in essence approving the decisions 2 that he was making? 3 A No, she was not approving anything. He was letting 4 her know. 5 Q So I guess I'm trying to understand what you mean by 6 "makes decisions with president of the company." 7 A 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. 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 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 -- 21 Q Was Roberto -- was Roberto letting her know this 22 information in advance? 23 A 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</p>	<p>1 meant. 2 Q He would inform her after the fact? 3 A He can inform -- yeah, any time. 4 Q Any time what? 5 A 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. 10 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. 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>
Page 148	Page 149
<p>1 A I'm going to read it. 2 "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?" 7 Well, I'm going to tell you right now -- 8 Q Did you see the question? 9 A Well, the question is if they share -- did they share 10 supervisory thing -- authority. So I think the answer 11 is no. 12 Q And that is what you checked; correct? 13 A 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. 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 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.</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 What is the question? Number 1? 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 Well, I would need to read -- well, what is Question 16 No. 1. 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 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. 25 Q Okay. And then I would like to go down to another</p>

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<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>
Page 168	Page 169
<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 CORP

12736 SW 133rd St
Miami, FL, 33186

WELLS FARGO BANK

EXHIBIT 7
Witness: M. De Armas
Date: 04-26-2022
Reporter: Michelle D. Elam, RPR, CCR

100181

08/08/2019

PAY TO THE
ORDER OF

Antonio Machado

\$ **4878.00

Four thousand eight hundred seventy-eight and 00/100 ***** DOLLARS

Antonio Machado



MEMO Receipts Pending

AUTHORIZED SIGNATURE



100181

PAYER

BAJA CONCRETE USA CORP
6103 St. Albion Way Apt. I-306
Mountlake Terrace WA 98043

Pay Date:

08/08/2019

PAYEE

Antonio Machado



TOTAL PAY:

\$4,878.00

MEMO:

Receipts Pending

<u>PAY</u>	<u>Current</u>
Reimbursement	4878.00

SUMMARY	Current
Total Pay	\$4,878.00

Total Pay

\$4,878.00

APPBAJA001237

10/23/2020 Interview Statement:
Antonio Machado

EXHIBIT D
TO DECLARATION OF LORNA S. SYLVESTER

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

INTERVIEW NOTES

INTERVIEWEE: Antonio (Tony) Machado

PHONE 760-613-6403

NO PERSON MAY RETALIATE AGAINST YOU FOR TESTIFYING IN THIS INVESTIGATION

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

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

Antonio (Tony) Machado gave the following information in response to questions asked regarding this case by Seattle Labor Standards Investigators Daron Williams and Ashley Harrison in a phone interview on October 20, 2020:

Q: When did you start working for Newway? In what role?

I've been working with Newway for many years. I started about 20 years ago, off and on.

Q: When did you start working at 1120 Denny Way?

I've been working here three years, as superintendent.

Q: Have you held any other positions at 1120 Denny Way?

No.

Q: Do you have any involvement or responsibilities at other Newway sites in or around Seattle?

No, none.

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Q: Explain in detail your daily duties at Newway.

Each day I talk to my foremen in the morning, the labor foreman, carpenter foremen, cement finisher foreman, to keep Newway on the project schedule.

Q: List all the projects that you worked on in Seattle over the past three years, including the dates when you worked there.

No others. Before this I was in San Diego, California.

Q: Who directs your work?

I had a project manager, I look after the field and I had the PM working in the office. Before it was Chris Birtch, and for the last year and a half, Tom Grant.

Q: How did they direct your work?

We had a meeting in the morning, we would talk to the owners of the building, make a weekly project schedule, and talk throughout the day. We had another office guy, Craig – so it was the management team that met each day.

Q: How often do you interact with contracted workers on the site?

I don't work with them, I just work with Newway people. Other companies, other trades, we see each other the site and say 'Good morning, how are you' but don't work with them.

Q: When did Baja Concrete USA get involved in the 1120 Denny Way project?

I can't be precise but it was probably about two years ago.

Q: How did Baja Concrete get hired or involved in the 1120 Denny Way project?

I don't know. That's all paperwork and contracts, that has nothing to do with me, that's with the office. I saw their boss here on site a few times, I'd say "Roberto, how are you," but I was not involved with his employees.

1 Q: Describe the connection between the companies Baja Concrete and Newway Forming
2 Inc.

3 To be honest, I don't know.

4
5 Q: How many employees worked for Baja Concrete at your job site?

6 I don't know exactly how many guys – maybe five, maybe six or seven? I didn't really
7 interact with them. I had a cement finisher foreman and would tell them what needed to
8 get done this week, but I didn't work with the subcontractor.

9 Q: Did you have authority to or input into hiring and firing Baja Concrete workers? If
10 not, who?

11 No. I don't tell him, 'Fire that guy', no. If my foreman had an issue with a guy the
12 foreman would talk to Roberto. The labor foreman and cement finish foreman would say
13 "I don't like this guy" but those foremen would deal with that, not me. With Roberto's
14 workers, I'd see them sometimes and I speak a little bit of Spanish, so I'd say 'Hi, how
15 are you,' but that's all.

16 Q: Did you have authority to or input into reprimanding or disciplining Baja Concrete
17 employees? If not, who?

18 No. I don't interfere with them, no.

19 Q: Did anyone at Newway direct Baja workers?

20 I had a cement finisher foreman, first it was Pedro, now Mario, they interacted with the
21 Baja guys. They'd tell them, 'after you're done with that, we're gonna do this.' You've
22 got to give them directions to get the work done.

23 Q: Who would they talk to about breaks?

24 We all have a timed break for the whole site, at 10:00 we stop for half an hour, and at
25 12:00 for another half hour, everyone stops, all the trades, unless we have a concrete pour
26 and have to work through the break or take it earlier or later. Each group's foreman
27 would let them know.

28 Q: Were you aware of Baja Concrete employees' concerns regarding improper pay?

1 No one ever came to me about that. If they had come to me, I would have talked to my
2 upper management and gone to them to say, 'These guys say they aren't getting paid.'

3
4 Q: Did you ever hear about the Baja Concrete workers' pay concerns from other people
at the site?

5 No, no one told me anything about that.
6

7 Q: Did you ever work with Roberto Soto Contreras? Please describe your understanding
8 of his role and the extent of your work with him.

9 I guess he was the manager or something, but I haven't see him for the longest time, we
10 don't really know where he is. I guess he would hire people, I'm not too sure, I guess he
was representing Baja.

11
12 Q: Who from Baja is in charge of directing the workers on site?

13 Those guys would come to the Newway foremen and the Newway foremen would guide
14 them and give them directions, what to work on, when to go home. Sometimes concrete
comes late or it's slow and you have to stay late, it's not uncommon for us to work ten
15 hours in a day and the foremen let them know how late to stay.

16 Q: Does that mean that there were no managers on site for Baja workers at any point?

17 No. No managers, no.
18

19 Q: If a Baja Concrete worker became ill and had to leave the site, who would they
20 inform?

21 If a guy got sick he would call Roberto to come and pick him up, and he'd tell the
22 Newway cement finisher foreman that he didn't feel good and he had to go home. And he
had a right to go home, because if you are sick, you are sick.

23
24 Q: Did you ever work with anyone else from Baja Concrete, besides Roberto and the
workers at the 1120 Denny Way site?

25 No. I met Roberto in Seattle about two years ago when they started bringing people to
26 our jobsite.
27
28

1 Q: Do you know how they are brought to the jobsite?

2 I guess they drive or come on the bus, I don't know.

3
4 Q: Did you ever work with Carlos Penunuri in relation to Baja Concrete?

5 Carlos? Plenty of guys named Carlos but I don't know if I know that Carlos. We went
6 through so many places, so many people that I don't even recognize some of the names
7 and faces. But I know we never had a manager here from Baja. The only guy who
8 managed them was Roberto, bringing the guys in and out, and confirming the hours.

9 Questions about Exhibit A - Invoice

10 Q: In Exhibit 1, you can see that Baja Concrete billed Newway at different hourly rates
11 for different trades, for example, \$40 per hour for a finisher, \$34 per hour for a laborer,
etc. Who determined those billing rates?

12 I never got involved with the bills. We have a timecard system here, Connor would go
13 through the invoices and make sure that the hours match, but I never got involved in the
14 timecards, timesheets, none of it.

15 Q: Did the Baja workers use those timecards?

16 Yes, they would sign in, sign out. Now they have a timeclock, punch in, punch out. The
17 last year, maybe a year and a half ago it changed to timeclock. Now it's probably Tom
18 Grant who looks at invoices.

19 Q: You don't know how the hourly rates were determined?

20 No. I never asked them, 'How much do you pay your guys?'

21
22 Q: Who from Baja Concrete completed and submitted these invoices?

23 It's got to be Roberto, but I really don't know.

24
25 Q: We noticed that some Newway people signed off on these timesheets, do you know
26 who?

27 No, I don't know.
28

1
2 Q: Who at Newway Forming approved payment of Baja Concrete's invoices?

3 I don't know.

4
5 Q: Did anyone at Newway ask you to verify that the invoiced hours were correct?

6 No, we have a manager Tom Grant or before Connor, who would check this. I don't get
7 involved with those things. For the past 2-3 months, I think it would be Tom Grant to
8 check the hours and make sure it was the right time.

9 Questions about Exhibit 2 - Timesheets:

10 Q: Newway provided us with copies of invoices from Baja Concrete to Newway
11 Forming, with the associated weekly timesheets for the workers. Each timesheet appears
12 to be signed by someone from Newway. Does the signature mean someone verified the
13 hours?

14 They use the timeclock for hours. Before it was timecard, now just the timeclock.

15 Q: Do the Baja workers use that same system?

16 It's a timeclock. Everyone has a card he puts there to punch in. They clock in and out
17 every day. It's inside our [Newway's] office here on site. We have an office here for my
18 PM, and we have a clock hanging there. This is how we've done it for a year and a half.
19 Before that, timecards. Every employee would do this. When a guy walks in, he goes into
20 the office and writes the time he starts in the morning, goes in to write the time he leaves
21 in the evening. Each day of work they would do that. Now it's the timeclock.

22 Q: Who would sign the timesheets?

23 Our guy Connor who was here, he would check. At the end of the week Roberto would
24 come with the invoice and Connor would make sure that those matched the hours on the
25 timecard.

26 Q: Do you know where Roberto would get the timesheet numbers from?

27 He would come here to check on time cards and make his invoice according to the
28 timecards here.

1 Q: Did he ever work as a cement finisher himself?

2 No, he would come here to bring the guys.

3
4 Q: Did your PM know how many hours those workers were working?

5 It's not the PM or even me, it's the cement finisher in charge, sometimes we'd work 8
6 hours, sometimes we'd stay late, Connor was in the office so he'd know people's punch
7 out times, and foremen would sometimes keep people late. All the PM does is signs the
8 bills. I have other things to do. Roberto would come here Monday mornings, check how
9 many hours his guys worked, and make out the invoice according to the hours his guys
10 worked.

11
12 Q: Did that foreman coordinate with Roberto about how many hours the workers would
13 work in a day?

14 No, the foreman figures out how long they work. It's hard to predict sometimes which
15 days will go late. At the end of the day we all stay late. Sometimes we work 8 hours,
16 sometimes 9, 10. You've got to work as we need, that's how we work.

17
18 Q: To your knowledge, were Baja Concrete employees compensated for all the hours
19 invoiced in these records?

20 Newway paid everything from the invoices. Sometimes the guys worked through breaks,
21 so if they worked through lunch you have to pay double, so they'd include that in the
22 hours they submitted.

23
24 Q: Let's say for example, if someone from Baja Concrete worked 60 hours in a week, do
25 you know if they got paid for 40 hours of straight time and 20 hours of overtime?

26 Honestly, I don't know.

27
28 Q: To your knowledge, who is the person or persons with ultimate responsibility for the
full project at 1120 Denny Way?

Onni owns the building, but I think Onni has nothing to do with this. This is between
Roberto and his employees.

Q: Was there anyone from Onni at the jobsite?

1 Yes, they are here full time: superintendents, PMs, interior foreman, they are here. The
2 main person was Luis Martinez but he was laid off, he's gone. I'm not sure if he even
3 knows of the Baja company.

4 Q: Did you report to anyone at Onni regarding the jobsite?

5 No, all we do once a week is have a trades meeting. The plumbers, electricians, to discuss
6 matters about the jobsite – everything.

7 Q: Have you ever worked for or on behalf of Baja Concrete USA?

8 No, never. They work for us here. I never met Roberto anywhere, no.
9

10 Q: Did you receive any form of payment, for any reason, from Baja Concrete USA
11 anytime between 2017 - 2020?

12 No, no sir.

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

14 No.
15

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

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

22 10/23/20

23 Date Signed

Antonio Machado

Antonio Machado

24 SEATTLE WA

25 Location (City and State)
26
27
28

4/28/2022 Deposition Excerpts:

OLS 30(b)(6)

Daron Williams

EXHIBIT E

TO DECLARATION OF LORNA S. SYLVESTER

Page 1

BEFORE THE HEARING EXAMINER
OF THE CITY OF SEATTLE

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

ZOOM DEPOSITION UPON ORAL EXAMINATION
OF
DARON WILLIAMS 30(b)(6)

9:00 a.m.

April 28, 2022

REPORTED BY: Pat Lessard, CCR #2104

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<p>1 EXHIBIT INDEX</p> <p>2 No. DESCRIPTION PAGE</p> <p>3 Exhibit 20 2/10/21 email from Stephanie 21</p> <p>4 Martinez to Ashley Harrison with</p> <p>5 attachments.</p> <p>6 Exhibit 21 Antonio Machado Interview Notes. 73</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>1 DARON WILLIAMS, being duly sworn, testified</p> <p>2 upon oath, as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. LARKIN:</p> <p>5 Q. Good morning, Mr. Williams. Thanks for</p> <p>6 joining us again.</p> <p>7 The last time we spoke was the deposition of</p> <p>8 you in your capacity as an investigator with the OLS</p> <p>9 and now you're speaking as the speaking agent for the</p> <p>10 OLS itself in this deposition.</p> <p>11 So it's a little bit different but it's</p> <p>12 going to be a lot of the same materials. And because</p> <p>13 we've been through this, I think we can get through</p> <p>14 this one faster today -- I know it was a long one the</p> <p>15 last time we did the deposition -- because most of the</p> <p>16 exhibits are the same.</p> <p>17 So what we'll be doing is authenticating</p> <p>18 exhibits, authenticating documents and asking a few</p> <p>19 questions about it, but I don't think in as much</p> <p>20 detail as we did last time.</p> <p>21 So with that I will share my screen and</p> <p>22 start with Exhibit 1.</p> <p>23 (Marked Deposition Exhibit No. 1.)</p> <p>24 Q. (By Mr. Larkin) Does everyone see this</p> <p>25 exhibit or Daron, do you see this exhibit?</p>
Page 8	Page 9
<p>1 A. Yes, I see it.</p> <p>2 Q. Okay. This is what I'll have the court</p> <p>3 reporter mark as Exhibit 1.</p> <p>4 Have you seen this document before?</p> <p>5 A. Me, yes.</p> <p>6 Q. Let me scroll through it just kind of slowly</p> <p>7 here. It's a four-page document.</p> <p>8 So this is the Notice of Rule 30(b)(6) that</p> <p>9 was issued by this office here on behalf of Baja</p> <p>10 Concrete USA Corp. relative to the City of Seattle,</p> <p>11 specifically the Office of Labor Standards.</p> <p>12 So to make things a little easier, I'll just</p> <p>13 refer to the City of Seattle Office of Labor Standards</p> <p>14 as OLS, and I will refer to my client Baja Concrete</p> <p>15 USA Corp. as Baja.</p> <p>16 And Mr. Williams, do you see within this</p> <p>17 Exhibit 1, starting on page two, there are some</p> <p>18 numbered categories of information here.</p> <p>19 Are you prepared to testify on behalf of OLS</p> <p>20 on each of these enumerated categories here?</p> <p>21 A. I think my assumption is I'm only testifying</p> <p>22 on a few of these things, not all of them.</p> <p>23 Q. Yes. So number one describes the OLS</p> <p>24 Findings of Fact, Determination and Final Order dated</p> <p>25 8/25/2021.</p>	<p>1 Are you prepared to testify regarding the</p> <p>2 Determination?</p> <p>3 A. Yes.</p> <p>4 Q. That's item one.</p> <p>5 And I understand someone else will be</p> <p>6 speaking as to number two and number four.</p> <p>7 So for number three are you prepared to</p> <p>8 testify regarding the OLS investigation that led to</p> <p>9 the Determination, how the information was obtained</p> <p>10 and the persons interviewed during the investigation?</p> <p>11 A. Yes.</p> <p>12 Q. We'll skip number four.</p> <p>13 And then on item five are you prepared to</p> <p>14 testify as to the basis for including all of the</p> <p>15 individuals listed in attachment B to the</p> <p>16 Determination?</p> <p>17 A. Yes.</p> <p>18 Q. And then the final one, item six, are you</p> <p>19 prepared to testify as to the concepts/doctrine of</p> <p>20 joint employment as it's discussed in the</p> <p>21 Determination?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 MS. FRANKLIN: I'm sorry to interrupt.</p> <p>25 I just wanted to refer you to my email from</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 62</p> <p>1 A. I don't know if this is inaccurate here or 2 not but he wasn't onsite until after May 2019. Prior 3 to that he was not. 4 Q. Okay. So at any time relevant to the 5 investigation, during the relevant period in which the 6 investigation applies, does OLS believe that Roberto 7 Contreras was working onsite at the project sites or 8 any one of them as a foreman? 9 A. To our knowledge that he was, yes, in some 10 capacity. 11 Q. To your knowledge is it -- I think you said 12 this already, but is it correct to say that most of 13 the, let's say, directing of the workers, supervision 14 of the workers, was done by Newway and/or -- or by 15 Mr. Machado, correct? 16 MS. FRANKLIN: Objection to the form of the 17 question. 18 MS. KINCAID: Join. 19 Q. (By Mr. Larkin) Yes. And actually we saw 20 that earlier. That was explained pretty well in the 21 Determination document itself. That was not a 22 question. 23 Still on the same Exhibit 7, the ninth page. 24 At the bottom of the ninth page -- and we discussed 25 this a while back -- there's a reference here to</p>	<p style="text-align: right;">Page 63</p> <p>1 "Whatsapp Records of Hours Worked." 2 Do you see that? 3 A. Yes. 4 Q. Again, I'd asked this before and I don't 5 think I've ever seen these records. 6 Does OLS have these Whatsapp records of 7 hours worked? 8 A. I'm not sure if we do. I don't know for 9 sure. 10 Q. Would you mind -- so at the bottom of this 11 page nine and into the beginning of page ten of this 12 document, would you mind reading into the record that 13 first bullet item, about three sentences. 14 A. "Whatsapp Records of Hours Worked. The 15 timesheets which Baja submitted to Newway corroborate 16 the evidence which the workers provided to us in the 17 form of Whatsapp messages where they reported their 18 hours worked to their Baja foreman. Their process was 19 to write out their hours worked for each pay period, 20 photograph that handwritten record, and text the image 21 to the foreman via Whatsapp." 22 Q. When it says "Their process was to write out 23 their hours worked," does that mean that was the 24 workers' process, each worker wrote out their hours 25 worked?</p>
<p style="text-align: right;">Page 64</p> <p>1 A. I believe so, yes. 2 Q. And then they would photograph that 3 handwritten record and text the image to the foreman 4 via Whatsapp? 5 A. Yes. 6 Q. And who was the foreman that's being 7 referred to there? 8 MS. FRANKLIN: And I would instruct the 9 witness not to answer to the extent that it reveals 10 the confidential informants' identities. 11 Q. (By Mr. Larkin) Yeah, let me ask a 12 different question. 13 Is that foreman mentioned there, is that 14 Antonio Machado? 15 A. I don't know for sure. I don't think so. 16 Q. Do you know whether that foreman listed 17 there was Roberto Contreras? 18 A. I believe so. 19 Q. Without disclosing any names, could that 20 foreman have been any other foreman onsite at the 21 various project sites? 22 A. It could have been. 23 Q. And again, these Whatsapp records, did 24 OLS -- during the investigation did OLS have access to 25 or be able to see these records?</p>	<p style="text-align: right;">Page 65</p> <p>1 A. It's been so long ago but I think we may 2 have. I don't know for sure. I can't remember 3 looking at these but I think we may have kept them. 4 Q. And in that same bullet point item that you 5 were just reading from, would you mind reading -- or 6 please do read the next sentence beginning with the 7 word "Compared." 8 A. "Compared to the full span of invoiced 9 timesheets, every single spot check we conducted 10 showed alignment between what the workers recorded and 11 what Baja invoiced Newway." 12 Q. So this would seem to indicate, if I'm 13 understanding you correctly -- first of all, spot 14 checks were conducted. But what is a spot check? 15 A. To look and see if they matched up, the 16 timesheets, to other forms of documents. 17 Q. You said that nobody from OLS was able to go 18 out to these project sites during the investigation 19 because of the pandemic? 20 A. Yes, that's correct. 21 Q. So these spot checks were not checks at the 22 worksites, the project sites? 23 A. No. 24 Q. So is it correct, then, that these spot 25 checks were comparing records to other records that</p>

<p style="text-align: right;">Page 66</p> <p>1 were produced in the investigation?</p> <p>2 A. Yeah. Records and testimony from the</p> <p>3 workers as to how many hours they worked.</p> <p>4 Q. So if every single spot check that OLS</p> <p>5 conducted showed alignment between what the workers</p> <p>6 recorded and what Baja invoiced Newway, how could</p> <p>7 there be underpayment or nonpayment of wages?</p> <p>8 A. That's a question you and Newway would have</p> <p>9 to find out. I'm not sure.</p> <p>10 Q. Is it OLS's position that the workers</p> <p>11 reported, recorded and reported hours via this</p> <p>12 Whatsapp, and then Baja invoiced Newway for the same</p> <p>13 number of hours, but then somehow Baja proceeded to</p> <p>14 underpay wages to the workers? Is that OLS's</p> <p>15 position?</p> <p>16 MS. FRANKLIN: Objection; calls for a legal</p> <p>17 conclusion.</p> <p>18 A. Yes, it is.</p> <p>19 Q. (By Mr. Larkin) I'm missing something.</p> <p>20 You may have explained this earlier but how</p> <p>21 did OLS reach that conclusion?</p> <p>22 A. When running what the workers got paid and</p> <p>23 how many hours they worked they didn't come out to the</p> <p>24 exact amount. It's off. You can see there's no</p> <p>25 overtime being paid.</p>	<p style="text-align: right;">Page 67</p> <p>1 So if you divide the total hours worked by</p> <p>2 how much they're getting paid, getting paid by hours</p> <p>3 worked, you can see that it was off.</p> <p>4 So it's pretty clear that it was an</p> <p>5 incorrect amount of money that was being paid to the</p> <p>6 workers.</p> <p>7 Q. Okay. But that sounds like that's based</p> <p>8 on -- I think what you're saying is less than overtime</p> <p>9 pay for actual overtime hours worked, correct?</p> <p>10 A. It's not including overtime. They were paid</p> <p>11 for all of their time but they weren't getting paid</p> <p>12 overtime. If they worked 50 hours in a week, they get</p> <p>13 paid for 50 hours, but they don't get ten hours of</p> <p>14 overtime.</p> <p>15 Q. Okay. So you're saying you believe or OLS</p> <p>16 believes there were situations where a worker may have</p> <p>17 been working 50 hours in a week and got paid, let's,</p> <p>18 say straight time for those 50 hours, correct?</p> <p>19 A. Yes.</p> <p>20 Q. But then you're saying, I don't know, in all</p> <p>21 some instances or in some instances they did not get</p> <p>22 paid the additional overtime, the time and a half wage</p> <p>23 for overtime for those ten hours, correct?</p> <p>24 A. Yes.</p> <p>25 Q. So the remaining exhibits that I'm going to</p>
<p style="text-align: right;">Page 68</p> <p>1 introduce are the various witness statements.</p> <p>2 A. Okay.</p> <p>3 MR. LARKIN: I don't know if anyone would</p> <p>4 like to take a short break before we shift gears into</p> <p>5 that section of the deposition.</p> <p>6 MS. FRANKLIN: I'll defer to the witness.</p> <p>7 THE WITNESS: If we could take a five-minute</p> <p>8 break.</p> <p>9 MR. LARKIN: Let's take five minutes, so</p> <p>10 we'll come back about 10:50.</p> <p>11 THE WITNESS: That works.</p> <p>12 (Recess.)</p> <p>13 Q. (By Mr. Larkin) So Mr. Williams, speaking</p> <p>14 on behalf of OLS, is it OLS's position that Baja</p> <p>15 controlled the activities of the workers at issue in</p> <p>16 this investigation?</p> <p>17 A. Can you define activity?</p> <p>18 Q. The work activities onsite at the various</p> <p>19 project sites.</p> <p>20 A. Maybe at some point a little.</p> <p>21 Q. At some point a little. But mostly it was</p> <p>22 other parties that directed their activities?</p> <p>23 A. Yes, from our uncovering stuff it was mainly</p> <p>24 Newway.</p> <p>25 Q. Do you know whether Baja set the wages, the</p>	<p style="text-align: right;">Page 69</p> <p>1 pay rates for the workers?</p> <p>2 A. Yes, that's what I'm saying.</p> <p>3 Q. Do you know whether Baja recruited, hired</p> <p>4 and, let's say, terminated workers?</p> <p>5 A. To my understanding, yes.</p> <p>6 Q. On behalf of OLS would you say that the</p> <p>7 workers performed work for the benefit of Baja?</p> <p>8 A. I think Baja and Newway.</p> <p>9 Q. Do you know whether there was any Baja</p> <p>10 equipment related to this cement work or other work --</p> <p>11 was there any Baja equipment located at the project</p> <p>12 sites?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Do you know whether or not the workers or</p> <p>15 any of them performed work duties at the premises of</p> <p>16 Baja rather than the project sites?</p> <p>17 A. I don't think Baja really had a premises,</p> <p>18 so.</p> <p>19 Q. Do you know whether the workers provided</p> <p>20 specialty skills which were essential to Baja?</p> <p>21 A. I guess you could say that, yes.</p> <p>22 Q. Could you also say the workers provided</p> <p>23 specialty skills that were essential to Newway</p> <p>24 Forming?</p> <p>25 A. Yes, I guess you could say that as well,</p>