

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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

I, Sara Kincaid, declare as follows:

1. I am an attorney for the plaintiff in this civil action. I am over 18 years of age, am competent to make this declaration, and submit this declaration based upon my personal knowledge.

2. Attached as **Exhibit 1** is a true and correct copy of excerpts of the February 1, 2022, deposition transcript of Antonio Machado.

3. Attached as **Exhibit 2** is a true and correct copy of excerpts of the May 5, 2022, 30(b)(6) deposition transcript of Newway Forming, Inc.

4. Attached as **Exhibit 3** is a true and correct copy of Baja USA Corp's Responses to Mr. Machado's Requests for Admissions dated February 22, 2022.

5. Attached as **Exhibit 4** is a true and correct copy of excerpts of the April 26, 2022, 30(b)(6) deposition transcript of Baja Concrete.

6. Attached as **Exhibit 5** is a true and correct copy of excerpts of the May 11, 2022, deposition transcript of Mercedes De Armas.

7. Attached as **Exhibit 6** is a chart compiled from the paystubs for the 53 aggrieved workers at issue in this case and the invoices from Newway Forming, which were submitted in the record with the City's Motion for Summary Judgment.

8. The declaration from Mr. Jonathan Parra Ponce signed May 26, 2022, was never produced by the City in Discovery prior to the expiration of the discovery period on June 1, 2022, or prior to filing their motion for summary judgment on July 1, 2022. Mr. Ponce was also not disclosed as a witness by the City of Seattle until April 1, 2022.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 3rd day of August 2022 in Seattle, Washington.



Sara Kincaid, WSBA No. 55846
Attorney for Appellant Antonio Machado

EXHIBIT 1

1 asking you questions about the specific issues in this
2 case.

3 So what's important to remember is, unless I
4 specify otherwise, the time period for my questions is
5 between February 2018 and August 2020. So, if I'm asking
6 you a question about your work on a construction site, I'm
7 asking just about your work during that time period.

8 **A. Okay.**

9 Q. Do you understand?

10 **A. Yes.**

11 Q. Okay. Do you work for Newway Forming?

12 **A. Yes, I am.**

13 Q. And when did you begin working for Newway?

14 **A. So I start many years ago, prob -- around 40, 41**
15 **year ago, you know, off and on.**

16 Then, you know, during the recession on the 80s,
17 I left Newway for a couple years. Then I came back. Same
18 thing. Then I -- when there was any less or in 2008, the
19 recession -- you know, not too much work. So then I left
20 them and come back. But, off and on, I been with Newway
21 around 40, 41 year.

22 Q. Forty or 41 years?

23 **A. Yes.**

24 Q. Okay. And do you work at the 1120 Denny Way
25 construction site?

1 A. Yes. I did from the -- I would say from the
2 beginning.

3 The beginning was another superintendent they
4 had named Joe Regal. I was at the yard, you know, with
5 some carpenters build in form for the site. And then I
6 came to the shop site, and I would say around September,
7 beginning about October 2017.

8 Q. Okay. Have you worked at other construction
9 sites?

10 A. No, not at all. That was the only -- the only
11 site I was involved.

12 Q. Okay. So I'm going to ask you some questions
13 about Newway's work on the construction site. And you
14 have to understand I really don't know a lot about
15 construction sites so you'll have to really break it down
16 for me --

17 A. Okay.

18 Q. -- and explain kind of how your industry works.
19 So what was Newway doing at 1120 Denny Way --

20 A. We built --

21 Q. -- between --

22 A. We build the structure, you know. We did the
23 concrete work, you know, all forming work. That's all we
24 did. Only the -- the structure, you know, the concrete.

1 COURT REPORTER: If I could please remind the
2 witness to let the attorney finish her question before you
3 start answering, please.

4 BY ERICA FRANKLIN:

5 Q. Sort of a learning curve with depositions. Like
6 I said, not -- not -- not typical conversation.

7 So can you just give me a little more detail.
8 What -- what exactly was Newway supposed to be doing with
9 this concrete?

10 A. What exactly we were doing? You know, we built
11 the -- we built the forms. We fill it up -- walls,
12 columns -- with the concrete. So, like I said, we do the
13 structure.

14 Then you got the other trades -- you know,
15 rebar, or you call the electrical -- electrical, plumbing.

16 But our scope of work was only do the forming --
17 you know, pouring forms, fill up with concrete, doing the
18 floors, grinding, sacking, patching. That's all. That
19 was our scope of work.

20 Q. Okay. Anything else? Or did you just cover
21 everything?

22 A. No. That's everything. You know, structure
23 that -- that's -- leveling the floors, which that's all we
24 did.

25 Q. Okay. And what is your current job title at

1 Newway Forming?

2 A. What -- I was a superintendent in there -- you
3 know, I'm still a super -- a superintendent for Newway
4 Forming.

5 Q. Okay. And are there others who are
6 superintendents, or are you the only one?

7 A. No. We are at the -- a PM -- a project manager.
8 Actually, we went through three of them. Was Chris Birch,
9 then Craig, then Tom Grant.

10 Tom Grant is the one who been there for most of
11 the time. He's a senior project manager.

12 Q. Okay. What is the difference between a project
13 manager and a superintendent?

14 A. Project manager is dealing -- it's, like, almost
15 like a CO. He's the one who deals, you know, with the
16 money, and sometimes with the PM from -- from the other
17 party -- from the other company.

18 Like, we were doing a job for Onni. Tom Grant
19 would go have a meetings with -- how do you call them?
20 With the PM from Onni.

21 And my scope of work -- my expertise, it's in
22 the field, you know, working with the guys, make sure, you
23 know, they do a good job, they work safe, they work safe
24 and they do a -- you know, a good job that -- and, you
25 know, that's pretty much what I was doing.

1 A. After he left, yes. Then I -- you know, I took
2 his place. Yes.

3 Q. Okay. Thank you. Now I understand.

4 Are there any -- so you've told me about PMs.
5 You've told me about the senior superintendent and
6 yourself. Was there anyone else at Newway who has a
7 managerial role?

8 A. No. Like -- like I said, I had a Tom. And then
9 it was a -- after that was me. And then I had a foreman.
10 I had a cement finish foreman. I had a three carpenter
11 foremans, and I had a labor foreman.

12 Q. Okay. Any other -- anyone else with -- who was
13 a manager?

14 A. As a -- no, not as a manager.

15 Then we had another guy -- his name is Connor.
16 Connor. He was the -- you know, in charge of a -- the
17 safety. But he spend most of his time, you know, in
18 the -- in the office.

19 Q. Okay. So can you explain to me what -- what you
20 did as a superintendent? What -- what your job was.

21 A. Okay. My job was, you know, once in a week, we
22 have all -- you know, all -- how do you call -- all
23 trades. We get together -- the plumber, electrician, the
24 mechanical guys, rebar guys. We get altogether, you know.
25 They calm them a weekly meeting. So we get together, try

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

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,

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.

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 --

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

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?

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

1 Q. Okay. And how many Newway workers were there
2 during this time period?

3 A. How many what? Sorry.

4 Q. How many workers were working for Newway at the
5 Denny -- 1120 Denny during this time period, if you know
6 approximately?

7 A. We had a prob -- I will say 70 people to work --
8 not right at the beginning but probably a halfway up or
9 a -- or quarter of a way up we probably -- yeah. At least
10 I will say seven -- probably 70 people.

11 Q. Seventy?

12 A. Yes. 7-0.

13 Q. Okay. And were there Baja Concrete employees on
14 the site while you were there?

15 ALEX LARKIN: Object to the form of the
16 question.

17 Go ahead.

18 ERICA FRANKLIN: Sorry. Objection as to the
19 form?

20 ALEX LARKIN: Form of question. Just preserving
21 the objection --

22 ERICA FRANKLIN: Thank you.

23 BY ERICA FRANKLIN:

24 Q. So between February 2018 and August 2020, were
25 there Baja Concrete -- people who worked for the Baja

Concrete on the site?

A. From when -- from February 7th --

Q. February -- February 2018 through August '20, in that time period -- yes -- were there Baja workers?

A. Yes. There were some workers there, yes.

Q. Do you know how many approximately?

A. I'll be honest with you. I don't know the exactly amount, no. I --

Q. Okay. That's -- I appreciate your honesty.

And so what work were these Baja workers performing?

A. They had some labors and some cement finishers.

Q. And can you explain how this fits into Newway's work? Like, what piece of the puzzle were the Baja workers doing?

SARA KINCAID: Objection to the form of the question.

Sorry. Tony, you can go ahead and answer.

BY ERICA FRANKLIN:

Q. Well, maybe let me rephrase.

Were the -- were workers working for Baja, were they doing the same work as other workers working for new -- Newway?

ALEX LARKIN: Object to the form of the question again.

1 BY ERICA FRANKLIN:

2 Q. You can still go ahead and answer.

3 Maybe -- let me rephrase to be more clear.

4 Let -- let's just switch gears for a moment.

5 Let -- I have some questions for you about worker hiring.

6 How many -- how are people hired by Newway in
7 general? How -- can you just walk me through how worker
8 hiring works at Newway?

9 A. Sorry. Can you repeat?

10 Q. Sure. Can you please walk me through the hiring
11 process at Newway? How -- how do workers come on board?

12 A. How they -- how they -- I'll be honest with you.
13 I -- I never ever hire one of a Baja guys. And the hire
14 -- you know, Tom Grant will communicate with Roberto Soto,
15 you know, when he needs, you know, guys.

16 I didn't hire not even one person on that -- not
17 even my carpenter -- the carpenter that will come from the
18 union hall, I never did any hire then. Never, ever did
19 any hire them.

20 Q. Okay. Do you -- even if you weren't personally
21 involved, do you know how workers were hired to work at
22 the -- at 1120 Denny?

23 A. No. I don't know how they did get hired, no.
24 Like I said, my expertise was make sure, you know, we get
25 the job safe and done on time, you know, on schedule. I

1 **never -- that is part of the management.**

2 Q. Okay. Do you know who would know about how
3 workers were hired?

4 **A. No. No, I -- no, I do not.**

5 Q. Just -- just one moment, please.

6 So who -- who did you report to at 1120 Denny
7 Way?

8 **A. Who do I report to?**

9 Q. Who's your boss?

10 **A. Who do -- I -- I was communicating with Tom**
11 **Grant, which is the PM, the project manager.**

12 Q. Okay. Was he your boss?

13 **A. Is what my boss?**

14 Q. Yeah. Just --

15 **A. Yeah. I consider him my boss -- as a boss, yes.**

16 Q. Okay.

17 COURT REPORTER: Just for the record, I don't
18 have, counsel, whatever you just said because you spoke at
19 the same time as the witness so it's not on record.

20 ERICA FRANKLIN: I apologize. Let me just ask
21 one more time.

22 BY ERICA FRANKLIN:

23 Q. Was Tom Brown your boss?

24 **A. Tom Grant, yes.**

25 Q. And what was your relationship like with

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 --

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.

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**

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?

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;

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?

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

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 --

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

1 didn't know who was -- who was there and who wasn't there?

2 SARA KINCAID: Objection to the form of the
3 question.

4 You can go ahead and answer --

5 BY ERICA FRANKLIN:

6 Q. Go ahead and answer, Mr. Machado.

7 So if you -- if you didn't know that a worker
8 was sick or not, did that prevent you from supervising the
9 work of the Baja workers?

10 A. If I didn't know what -- they was -- I don't
11 know because I wasn't involved with the Ba -- with the
12 Baja employees, no. I --

13 Q. Did -- who did a Baja worker go to if they
14 needed to take time off because they were sick?

15 A. I guess Roberto's got a -- has to communicate
16 with a Tom Grant or -- I don't know. I wasn't involved
17 with it -- with those things. I don't know anything.

18 Q. Okay. Were you involved in -- in disciplining
19 employees?

20 A. Discipline employ -- no.

21 Q. So what if -- what if someone did something
22 really bad? It didn't seem like they should be a
23 construction worker anymore. What happened with that
24 person?

25 A. It -- sorry. Can you -- if a guy what? So --

1 came to be that Baja and Newway were working together
2 at --

3 **A. No.**

4 Q. -- 1120 Denny?

5 **A. No, I do not.**

6 Q. Okay. And just to go back a minute, did you --
7 Mr. Machado, did you understand the last questions -- the
8 questions that I asked previously? Just -- just a moment
9 ago.

10 **A. About.**

11 Q. About Mr. Ibiya?

12 **A. Yeah. What -- I told you I met him in Edmonton;**
13 **right? In north of Canada. Edmonton.**

14 Q. Okay. And just to clarify --

15 SARA KINCAID: Tony, did -- in -- in responding
16 to the previous questions, did you understand that
17 Ms. Franklin was asking about the relationship between
18 Newway and Baja, not between --

19 **THE WITNESS: I --**

20 SARA KINCAID: -- or not about when you met
21 Baja?

22 **THE WITNESS: I -- I don't know what -- you**
23 **know, the relationship between them, I don't know. I**
24 **don't know.**

25 ALEX LARKIN: And, Ms. Franklin, I think there

1 SARA KINCAID: And this is Sara Kincaid. I'll
2 join in that objection.

3 BY ERICA FRANKLIN:

4 Q. You can still answer.

5 How did Baja Concrete USA -- do you know how
6 they made contact with Newway Forming?

7 A. No, I do not.

8 Q. Okay. Do you know who would know?

9 A. Who -- who would know?

10 Q. Who would know the answer to that question.

11 A. I was -- Joe Regal. Joe Regal.

12 Q. Okay. So when did workers from Baja Concrete
13 USA Corp, when did -- workers were paid by them. When did
14 they begin working at 1120 Denny?

15 A. I am not too sure. Was 2000 -- 2017? I -- I
16 don't know exactly the amount. I don't know prob --
17 ape -- April? May? I'm not too sure.

18 Q. Okay.

19 A. It was 2007 --

20 Q. Do you know --

21 A. No. It's probably 2018. I went -- I came from
22 San Diego in 2000 -- 2016. 2000 -- 2017. Probably 2018.
23 I'm -- I'm not too sure.

24 Q. Okay.

25 A. Because I got -- 2017, I went around -- I don't

1 **A. Mr. Sosa? Who's --**

2 Q. Mr. Soto. What were -- what were his duties --

3 **A. Oh, so -- I don't know. To be honest, I don't**
4 **know. I'm not going to tell you things I -- I don't know.**

5 Q. Do you know how his pay was determined?

6 **A. How what? Sorry.**

7 Q. Do you know how his pay was determined? Who --
8 who set Mr. Soto's pay?

9 **A. How -- how Mr. Soto gets paid? I don't know. I**
10 **don't know anything.**

11 Q. Okay. Just one moment.

12 So did you -- were you ever involved in firing
13 people on the -- on the site?

14 **A. Never. I never ever fire one person. Never.**

15 Q. Did you get involved in -- were workers fired
16 ever, to your knowledge, who --

17 **A. I --**

18 Q. -- worked at 1120 Denny?

19 **A. I -- I don't -- I don't know. Roberto didn't**
20 **never mention -- one of the guys one time -- after all**
21 **this going on -- he was working for a window company.**
22 **And, you know, I'm going to tell you nothing but the**
23 **truth. He says -- and that -- he told me, so -- I asked**
24 **him, "So you don't work with Roberto? You work on the**
25 **windows?"**

1 And he -- he told me, "Oh, Roberto told me you
2 don't want -- you don't want me on your job site. You
3 want -- you want -- you know, he wants me to get fired
4 because of you."

5 And I said, "No, that's not true." I never,
6 ever fired anybody, no.

7 Q. And were you involved behind the scenes in
8 decisions to fire people?

9 A. No. Never. Never.

10 Q. Were there any disciplinary actions taken that
11 weren't quite firing?

12 Did -- did workers ever just get in trouble, and
13 were they subject to discipline?

14 A. I don't know. Like I said, I -- I don't know
15 who was going on between the Roberto and the -- his
16 employee -- his employees or Baja employees. I don't -- I
17 don't have a clue. I don't know anything.

18 Q. Okay. Did you ever threaten to fire employees?

19 A. Never. Not even my -- I don't -- to be honest,
20 I don't have a -- the guts -- sorry -- if it's a -- guts
21 or the courage. That's the last thing I want to do is
22 anybody lose their job. This is, you know, from the
23 bottom of my heart. That's the last thing is fire
24 anybody.

25 Q. Okay. What about a Padro? Did he ever fire

1 Connor. And then Connor he left not too long ago. And
2 then his assistant, he was the one, you know, checking on
3 them. But I had nothing to do with that. I don't know.
4 I'm not going to tell you things I don't know.

5 Q. Okay. Thank you. I appreciate that.

6 Was there a difference between how the Baja
7 workers recorded their hours and how the workers being
8 paid by Newway recorded their hours?

9 A. I don't know. I don't have a no clue. I don't
10 know.

11 Q. But -- but you're telling that they both used --
12 used the time clocks in the Newway office; is that
13 correct?

14 A. Yes.

15 Q. Was there a difference -- for the workers paid
16 by Baja, was there a difference between what Newway paid
17 them and what those workers actually received?

18 A. I don't -- I don't -- sorry. Can you repeat was
19 the difference between --

20 Q. Not counting taxes or anything like that,
21 deductions, was there a difference --

22 A. No. I --

23 Q. -- between what --

24 A. I don't know. That -- I don't know anything. I
25 don't. I don't know -- and I don't know nothing about

Baja's business. I -- I don't know.

Q. Okay. And I'd actually like to introduce my first exhibit. Just -- I'm going to show you a document just in one moment.

Okay. I would like to introduce a document that -- it starts with the letter A in our exhibit list.

ERICA FRANKLIN: Ms. Borgida, is that -- do you understand which document I mean?

VIDEOGRAPHER: Yes. Pulling it up right now.

ERICA FRANKLIN: So I'd like to mark that Exhibit A -- Exhibit 1, please.

VIDEOGRAPHER: Okay. Perfect.

(Deposition Exhibit 1 was marked for identification.)

BY ERICA FRANKLIN:

Q. Mr. Machado, can you see this -- this exhibit?

A. A.

Q. Can you see it on your screen?

A. I can. Got to go up a little more. I cannot see the bottom.

Q. Okay.

A. Yes. Yes. That's my signature. I'm going to -- I don't know if you prob going to find one or two.

What happens sometimes, they have the timecards. And the --

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

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

4 SARA KINCAID: I'll join that objection.

5 (Reporter clarification.)

6 BY ERICA FRANKLIN:

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

9 ALEX LARKIN: Object to the form.

10 SARA KINCAID: I'll join that objection.

11 BY ERICA FRANKLIN:

12 Q. You can answer, Mr. Machado.

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

16 Q. Okay.

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

20 Q. Okay. Just one moment.

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

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

ERICA FRANKLIN: It's marked C initially.

BY ERICA FRANKLIN:

Q. Okay. Mr. Machado, have you seen this particular document before?

A. No.

Q. I'm sorry. I didn't hear your answer.

A. No, I didn't.

Q. Okay. Have you -- have you seen a document like it?

A. No.

ERICA FRANKLIN: Okay. Let's move on from this one. Let's -- if we could please pull up exhibit -- the exhibit that was originally marked D and mark that as Exhibit 4. Thank you.

(Deposition Exhibit 4 was marked for identification.)

BY ERICA FRANKLIN:

Q. Okay. Mr. Machado, have you seen this before?

A. No. I never see that before. Like I -- I don't have access and haven't -- you know, nothing to do with the Baja. I don't know anything. No. I never --

Q. Okay. Have -- have you seen any other documents that -- on deductions and con --

A. No.

Q. -- contributions?

A. I never --

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

SARA KINCAID: I'll join that objection.

BY ERICA FRANKLIN:

Q. Have you seen other documents like this?

A. No.

ALEX LARKIN: Same -- same objection.

BY ERICA FRANKLIN:

Q. Were -- were there amounts that were ever deducted from worker's pay to your knowledge?

A. No. I --

SARA KINCAID: Object to the question.

JASON WANDLER: I'm going to object to the question.

Are we talking about Newway workers? Are we talking about Baja workers?

BY ERICA FRANKLIN:

Q. Okay. Let's take them one at a time.

For Newway workers, were there ever deductions from their pay?

A. Deduction from -- when you do a payroll, every -- you know, everybody pay taxes and that -- on their paycheck; right?

Q. Sure. So what about tools? Did Newway workers

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

3 Were amounts ever deducted from their pay?

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

6 BY ERICA FRANKLIN:

7 Q. You can go ahead and answer.

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

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

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

13 BY ERICA FRANKLIN:

14 Q. You can still answer.

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

18 Q. Okay.

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

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

24 BY ERICA FRANKLIN:

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

1 Q. Correct?

2 A. Yes.

3 Q. And who determined what your salary was?

4 A. Who what? The owner of the company. When I --
5 I made a deal with him, you know. When I was in San
6 Diego, I came to Seattle. We made a deal.

7 Newway has two shareholders: The president is
8 Ezio Bortolussi, and the vice president it is -- what's
9 his -- Sal Giantomaso. So we made a deal with the owners,
10 you know, with the shareholders.

11 Q. And did your salary change at any time between
12 February 2020 and -- February 2018 and August 2020?

13 A. Yes. It same salary, same money I was making in
14 the -- you know, the San Diego. It's same thing.

15 Q. Okay. Tell me what factors went into the pay
16 that you negotiated when -- when you negotiated your pay
17 with Newway.

18 A. Sorry. Can you repeat?

19 Q. So when you negotiated your pay with Newway --

20 A. Yes.

21 Q. -- what determined what that pay is? What that
22 pay was.

23 A. You want -- you want me tell you? I was making
24 \$160,000 a year on my --

25 Q. And how did --

1 A. -- salary.

2 Q. How did you and Newway determine that that was
3 an appropriate amount?

4 A. I mean, I been with the -- with the -- with the
5 company. I help built this company for so many years.
6 Actually, they offer me that -- that salary. You know, he
7 said -- so they were the ones, you know, who offered me
8 that, you know, that salary. I said, "Thank you very
9 much."

10 Q. Okay. And who -- where did your -- did you --
11 did you receive paychecks? Direct deposit? How are you
12 paid?

13 A. By checks were what -- yeah. I get paid -- I
14 was getting paid every week.

15 Q. Okay. In what -- in what form?

16 A. What -- with a -- what do you mean what -- a
17 paycheck.

18 Q. Were you receiving a paycheck? Were you
19 receiving direct deposit into a bank account?

20 A. No. I was receiving the paycheck with the --
21 with the -- the deduction -- you know, the deductions off,
22 you know.

23 Q. Okay. And where did that paycheck from come
24 from?

25 A. Where the pay -- from the payroll company,

1 whatever -- you know, whatever is doing the payroll.

2 Q. And you receive -- you said you receive direct
3 deposit --

4 A. No.

5 Q. -- weekly.

6 Did you -- were there ever any other direct
7 deposits other than those --

8 Q. Through --

9 Q. -- weekly deposits?

10 A. -- Newway? No. No. No. Not from Newway, no.

11 Q. Where -- did you receive payment from anyone
12 other than Newway?

13 A. What -- what -- I got paid to Ba -- Baja, yes.
14 I lend them some money. And they paid me, yes.

15 Q. How much money did you lend Baja?

16 A. All -- you know, I could be wrong. I was
17 talking even to -- to my lawyer. I could be wrong. It
18 could be -- it wasn't all in one -- all at once.

19 I lend the -- what's his name -- Carlos Ibarra.
20 I lend him some money. You know, 3,000 one time, another
21 time 2,000, then 1500, then 1,000. Altogether, I would
22 say -- before I -- I -- I said maybe 20,000, but it wasn't
23 20,000. I would say maybe 12, 13,000.

24 But he paid me everything. He doesn't owe me
25 anything.

1 in?

2 A. He gave me a check from the company, and then
3 twice they wired to me.

4 But they -- like I said, I did this normal
5 relation because, if you know I'm going to get caught, I
6 want to -- but I have nothing to hide.

7 This was a true, you know, that -- a true thing
8 I did. I help so many to all -- to all my -- through all
9 my life. I helped so many people. I never get -- you
10 know, they pay me.

11 When I was young, if you need the help here and
12 there, you know, on my early days, people would help me.
13 So, like I said, I did that to him.

14 If I know you well, I would do it for you. Not
15 a million dollars, not \$100,000. We talking, you know, 2,
16 3, 4, 5,000. He pay me, then I lend him money back again.

17 I don't think it's a big deal. You know what
18 I'm saying? That's way I look at it.

19 Q. Okay. So tell me what you loaned him money for?

20 ALEX LARKIN: Object to the form of the
21 question.

22 SARA KINCAID: I'll join in that objection.

23 BY ERICA FRANKLIN:

24 Q. You can answer.

25 A. Carlos, he call me one time. He said, "Tony, I

1 have some guys working down in Seattle. I gotta rent
2 someplace. I got to get a van and the car. I have
3 money."

4 I know he has money. I don't talk to him now
5 for the longest time. He still on -- it's still going on
6 yet, you know, in Canada. I'm working in Canada.

7 And he says, "Tony, I have money, but I don't
8 have American money. Can you lend me some money?"

9 I said, "How much?"

10 "\$3,000." Okay.

11 Then he says, "I will put it in envelope.
12 Herberto will come." Okay.

13 Then two weeks later, "Tony, I need another
14 \$1500." Then, Tony, "I need a \$1,000." So -- and then so
15 he send me a check. You know, that's the check, you know,
16 they send me.

17 But, again, I did this without malicion.
18 Because I could tell him, you know -- to me, I lend him
19 money. You pay me with a check. You pay me with a credit
20 card. I don't care as long as I gets my money back.
21 That's all I want.

22 So I lend him money, not all at once, little bit
23 here, little bit there. So he paid me -- I cannot say --
24 I cannot say anything bad about him. He paid me.

25 Q. Did he pay you exactly what you had paid him?

1 **A. Yes.**

2 ALEX LARKIN: Same objection.

3 BY ERICA FRANKLIN:

4 Q. How do you know?

5 How do you know that he paid you the same amount
6 that you paid to him?

7 ALEX LARKIN: Same objection.

8 BY ERICA FRANKLIN:

9 Q. You can answer.

10 **A. Yes. Whatever I lended to him, he paid -- he**
11 **paid me. No more, no less. No interest. No. No. No.**
12 **Whatever, you know, I lended to him, that's what he paid**
13 **me.**

14 Q. How did you two keep track of how much he owed
15 you?

16 ALEX LARKIN: Same objection.

17 BY ERICA FRANKLIN:

18 Q. You can answer.

19 **A. I mean, when I lend money, I mean, you mark it**
20 **down; right? I mean, you have to have a track of -- of**
21 **your money.**

22 Q. Oh, do you have that -- do you have that marked
23 down somewhere?

24 **A. Do I have the -- no. You mark on your head. I**
25 **mean, I give you cash, \$1,000, 1500 -- I mean, 1500,**

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

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

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.

1 business. I -- you know, I just told, you know, you guys
2 how much I make. I make -- I never told no one. You
3 know, that's my business. That's my private -- you know,
4 my privacy.

5 BY ERICA FRANKLIN:

6 Q. Did -- did you ever discuss how -- how Baja was
7 paying its employees with Carlos?

8 A. No.

9 ALEX LARKIN: Object to the form of the
10 question.

11 SARA KINCAID: I'll join that objection.

12 BY ERICA FRANKLIN:

13 Q. You can answer.

14 A. No.

15 Q. So what is Carlos' role at Baja? What does he
16 do for the company?

17 ALEX LARKIN: Object to the form of the
18 question.

19 SARA KINCAID: I'll join that objection.

20 BY ERICA FRANKLIN:

21 Q. You can answer.

22 A. Like, I don't know what -- to me, my knowledge,
23 I thought him was the owner -- the shareholder. And then
24 all this going on, then I heard it's deceased -- at the
25 first, they were saying they live in -- she lives

ALEX LARKIN: Yes. Let's please mark this as the next exhibit, which I think would be Exhibit 8.

JASON WANDLER: I think that's right.

(Deposition Exhibit 8 was marked for identification.)

BY ALEX LARKIN:

Q. Mr. Machado --

A. Yes.

Q. -- is it correct that all of the workers at the Denny Way site were using these cards?

SARA KINCAID: Objection to the form of the question.

BY ALEX LARKIN:

Q. Please answer.

A. At the beginning, they were using timecards. And then, later on, they changed to time clock.

Q. Okay. But, in either case, there -- there are -- there should be documentation in -- in the possession of Newway Forming showing these hours; correct?

SARA KINCAID: Objection to the form of the question.

JASON WANDLER: I join.

THE WITNESS: I'm pretty sure, you know, they should have a copy of both cards. But, again, I don't have any control of that. You'd have to ask, you know,

1 **either Newway head office or Tom Grant.**

2 ALEX LARKIN: So I'll introduce another exhibit
3 here. Let's mark this as Exhibit 9, please.

4 (Deposition Exhibit 9 was marked for
5 identification.)

6 BY ALEX LARKIN:

7 Q. Do you recognize what we see here, Mr. Machado?

8 A. Not really, sir, no. I -- I cannot see too
9 good. That -- that looks like timecards; right? They are
10 timecards.

11 Q. Is it -- is that what you believe they are?

12 A. To me, it looks like a timecard. I cannot say
13 100 percent, but it looks like a timecard. It looks like
14 a timecard, yeah. Just like the one -- just like the one
15 you showed me before; right?

16 Each employee has his name on. It's a timecard.

17 Q. So are -- are these Newway Forming timecards?

18 SARA KINCAID: Objection to the form of the
19 question.

20 **THE WITNESS:** Again, I don't know was the idea
21 to come with the timecards. I don't know if he -- Ibarra
22 made them or Newway. That I don't know. I cannot answer
23 that question. I -- I don't know.

24 ALEX LARKIN: Okay. I'll introduce the next
25 exhibit; so this will be Exhibit 10.

1 BY SARA KINCAID:

2 Q. Mr. Machado, I just had a couple of brief
3 followup questions.

4 Now, how did you become aware that Newway had
5 Baja -- well, strike that. Let me rephrase this question.

6 How did you become aware that Newway Forming
7 subcontracted with Baja Concrete USA?

8 A. I -- I did not. I -- I know they start in
9 Bellevue -- you know, we had a job in Bellevue. That's
10 when they start. But I don't know exactly days, exactly
11 month. I don't know. They start in 2017 in Bellevue --
12 you know, Bellevue, Washington. But I don't know exactly
13 they -- I believe it was Joe Regal, he's the one who hired
14 them.

15 Q. And Tony -- I'm sorry. I don't mean to cut you
16 off.

17 So I guess when did you become aware that Newway
18 had subcontracted with Baja Concrete USA?

19 ALEX LARKIN: Object to the form of the
20 question.

21 BY SARA KINCAID:

22 Q. You can go ahead, Tony.

23 A. I would say probably around -- not too far from
24 creation. It could be November, December 2017.

25 Q. And so my question is, when you became aware

1 Q. Did -- did all of the companies take breaks at
2 the same time?

3 A. Most of them, they did, yes. Most of them, they
4 did because we had a coffee truck -- you know, a food
5 truck come into the job site. So everyone would stop
6 pretty much same time, you know, go grab their lunch.

7 Q. And whether or not you signed any timecards or
8 time sheets, did you ever know how or what Baja Concrete
9 USA workers were being paid?

10 A. No. I never -- I -- like I said, I mentioned
11 before, I didn't know anything about Baja, and I still
12 don't know.

13 But I see it now on the document how much they
14 were pay -- you know, two -- per labor or per labor or for
15 cement finish. Those deals I never made -- was between --
16 what's his name -- Tom Grant and Joe Regal at the
17 beginning.

18 Q. Okay. And -- and when you say -- you -- you
19 were referencing you see now. Are you referring to the
20 documents that you've seen being produced by the -- by
21 Baja and the Office of Labor Standards?

22 A. Now, I been see -- like I saw some today. And
23 sometimes, you know, the -- the lawyers, they use send,
24 you know, some papers. That's the only thing I know.

25 Before that, I -- I never saw anything. I don't

EXHIBIT 2

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.

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?

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

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?

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.

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,

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.

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.

EXHIBIT 3

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the matter the Appeal of:) Hearing Examiner File:
)
BAJA CONCRETE USA, CORP.,) No.: LS-21-002
ROBERTO CONTERAS, NEWWAY) LS-21-003
FORMING INC., and ANTHONY) LS-21-004
MACHADO)
) APPELLANT ANTONIO MACHADO'S
from a Final Order of the Decision issued by) FIRST REQUESTS FOR ADMISSION TO
the Director, Seattle Office of Labor Standards) APPELLANT BAJA CONCRETE USA,
) **CORP. AND BAJA CONCRETE USA,**
) **CORP.'S RESPONSES THERETO**

TO: BAJA CONCRETE USA, CORP., Appellant;
AND TO: MARK KIMBALL and ALEX LARKIN, Attorneys for Appellant Baja
Concrete.

Pursuant to Washington Superior Court Civil Rules 36, Appellant Antonio Machado hereby requests that Appellant Baja Concrete answer the following requests for admission separately and fully, in writing, and under oath within twenty (20) days after service.

We are happy to meet and confer to discuss any discovery request and a protective order. Please initiate that conversation during the 20 days after service, rather than waiting until answers are due. Any extension of time will be for answers, not objections.

Throughout these requests for admission, "you" and "your" refers to Appellant Baja Concrete USA Corp and any employee or agent or owner or manager thereof.

"Work Sites" means the construction projects at 1120 Denny Way, Seattle, WA 98109 (the "Denny Site"), 707 Terry Avenue, Seattle, WA 98104 (the "Terry Site"), and 2014 Fairview Avenue, Seattle, WA 98121 (the "Fairview Site").

1 “Workers” means individuals identified on Attachment B of the Findings.

2 **REQUESTS FOR ADMISSION**

3 **REQUEST FOR ADMISSION NO. 1:** Admit Antonio Machado did not hold an
4 ownership interest in Baja Concrete USA.

5 **RESPONSE:**

6
7 Objection as to “Baja Concrete USA” on grounds that that phrase is ambiguous and not defined
8 herein. To the extent that this Request for Admission No. 1 is requesting Baja Concrete USA
9 Corp. admit or deny that Antonio Machado did not hold an ownership interest in Baja Concrete
10 USA Corp., ADMIT.

11
12
13 **REQUEST FOR ADMISSION NO. 2:** Admit Antonio Machado was not an employee
14 of Baja Concrete USA.

15 **RESPONSE:**

16
17 Objection as to “Baja Concrete USA” on grounds that that phrase is ambiguous and not defined
18 herein. To the extent that this Request for Admission No. 2 is requesting Baja Concrete USA
19 Corp. to admit or deny that Antonio Machado was not an employee of Baja Concrete USA
20 Corp., ADMIT.

21 **REQUEST FOR ADMISSION NO. 3:** Admit Antonio Machado was not on Baja
22 Concrete USA's payroll at any time.

23
24 **RESPONSE:**

25
26 Objection as to “Baja Concrete USA” on grounds that that phrase is ambiguous and not defined
herein. To the extent that this Request for Admission No. 3 is requesting Baja Concrete USA

1 Corp. to admit or deny that Antonio Machado was not on the payroll of Baja Concrete USA
2 Corp. at any time, ADMIT.

3
4 **REQUEST FOR ADMISSION NO. 4:** Admit Antonio Machado did not exercise
5 operational control over aspects of Baja Concrete USA's day-to-day functions.

6 **RESPONSE:**
7 Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined
8 herein. To the extent that this Request for Admission No. 4 is requesting Baja Concrete USA
9 Corp. to admit or deny that Antonio Machado did not exercise operational control over aspects
10 of Baja Concrete USA Corp.'s day-to-day functions, ADMIT.

11
12 **REQUEST FOR ADMISSION NO. 5:** Admit that Antonio Machado did not have
13 authority to make decisions on behalf of Baja Concrete USA.

14 **RESPONSE:**
15
16 Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined
17 herein. To the extent that this Request for Admission No. 5 is requesting Baja Concrete USA
18 Corp. to admit or deny that Antonio Machado did not have authority to make decisions on
19 behalf of Baja Concrete USA Corp., ADMIT.

20
21 **REQUEST FOR ADMISSION NO. 6:** Admit that the check to Antonio Machado
22 attached as **Exhibit A** was a repayment for a loan.

23 **RESPONSE:**
24
25 ADMIT.
26

1 **REQUEST FOR ADMISSION NO. 7:** Admit the loan Antonio Machado made to

2 Baja Concrete USA Corp. was unrelated to any work performed by Workers at any of the Work
3 Sites.

4 **RESPONSE:**

5 Objection to the word “Workers” as the definition appears to include persons who were not paid
6 by Baja Concrete USA Corp. Objection to the phrase “unrelated to any work performed by
7 Workers” on grounds that this phrase is vague and ambiguous. Objection to the phrase “the
8 loan Antonio Machado made to Baja Concrete USA Corp.” on grounds that this phrase is vague
9 and ambiguous. To the extent that this Request for Admission No. 7 is asking for Baja
10 Concrete USA Corp. to admit or deny that Antonio Machado loaned funds to Baja Concrete
11 USA Corp. and that the loaned funds were not related to the performance of those Workers who
12 were paid by Baja Concrete USA Corp. at the Work Sites, ADMIT.

13
14 **REQUEST FOR ADMISSION NO. 8:** Admit that the check to Antonio Machado
15 in **Exhibit A** is unrelated to what the Workers were paid by Baja Concrete USA Corp. for work
16 performed at any of the Work Sites.

17 **RESPONSE:**

18 Objection to the word “Workers” as the definition appears to include persons who were not paid
19 by Baja Concrete USA Corp. To the extent that this Request for Admission No. 8 is asking
20 Baja Concrete USA Corp. to admit or deny that the check to Antonio Machado shown in
21 Exhibit A hereto is unrelated to what persons, who form a subset of the defined term
22 “Workers,” whom were paid by Baja Concrete USA Corp., is unrelated to how much said
23 persons were paid by Baja Concrete USA Corp., ADMIT.

24
25 **REQUEST FOR ADMISSION NO. 9:** Please admit that Claudia Penunuri signed
26 the letter attached as **Exhibit B**.

RESPONSE:

1 DENY.

2
3 **REQUEST FOR ADMISSION NO. 10:** Please admit that **Exhibit B** is a true and
4 correct copy of an October 21, 2018, letter signed by Claudia Penunuri.

5 **RESPONSE:**
6 DENY.

7
8 **REQUEST FOR ADMISSION NO. 11:** Please admit that **Exhibit C** is a true and
9 correct copy of a business card You provided Roberto Soto Contreras.

10 **RESPONSE:**
11
12 DENY as stated. The definition of “You” is vague in that it includes “agents” of Baja Concrete
13 USA Corp. but fails to define “agent.” To the extent that this Request for Admission No. 11 is
14 requesting Baja Concrete USA Corp. to admit or deny that the item shown in Exhibit C hereto
15 depicts a business card provided to Roberto Soto Contreras by Baja Concrete USA Corp.,
16 ADMIT.

EXHIBIT A

BAJA CONCRETE USA CORP

12736 SW 133rd St
Miami, FL, 33186

WELLS FARGO BANK

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

3825 164th ST SW
Lynnwood WA 98087

MEMO Receipts Pending

AUTHORIZED SIGNATURE

⑈ 100181⑈ ⑆063107513⑆ 6316119897⑈

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
3825 164th ST SW
Lynnwood WA 98087

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

EXHIBIT B

Baja Concrete USA Corp

October 21, 2018

To whom it may concern:

Mr. Ruben F. Gonzalez has been employed with Baja Concrete USA Corp. from June 18, 2017 to present. Mr. Ruben F. Gonzalez is a Construction Foreman and he earns \$15 hourly. He is paid biweekly and he makes approximately \$5600 a month.

If you have any further questions please don't hesitate to call.

Regards,


Claudia Benfumeni

Project Manager

215-206-3070

EXHIBIT C

BBIA CONCRETE USA

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

Roberto
Carlos

Cell 360.559.9400
Cell 780.885.6123

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

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the matter the Appeal of:) Hearing Examiner File:
)
BAJA CONCRETE USA, CORP.,) No.: LS-21-002
ROBERTO CONTRERAS, NEWWAY) LS-21-003
FORMING INC., and ANTHONY) LS-21-004
MACHADO)
) APPELLANT ANTONIO MACHADO'S
from a Final Order of the Decision issued by) FIRST REQUESTS FOR ADMISSION TO
the Director, Seattle Office of Labor Standards) APPELLANT BAJA CONCRETE USA,
) CORP. AND BAJA CONCRETE USA,
) CORP.'S RESPONSES THERETO
)

TO: BAJA CONCRETE USA, CORP., Appellant;

AND TO: MARK KIMBALL and ALEX LARKIN, Attorneys for Appellant Baja Concrete.

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"Work Sites" means the construction projects at 1120 Denny Way, Seattle, WA 98109 (the "Denny Site"), 707 Terry Avenue, Seattle, WA 98104 (the "Terry Site"), and 2014 Fairview Avenue, Seattle, WA 98121 (the "Fairview Site").

"Workers" means individuals identified on Attachment B of the Findings.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit Antonio Machado did not hold an ownership interest in Baja Concrete USA.

RESPONSE:

Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined herein. To the extent that this Request for Admission No. 1 is requesting Baja Concrete USA Corp. admit or deny that Antonio Machado did not hold an ownership interest in Baja Concrete USA Corp., ADMIT.

REQUEST FOR ADMISSION NO. 2: Admit Antonio Machado was not an employee of Baja Concrete USA.

RESPONSE:

Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined herein. To the extent that this Request for Admission No. 2 is requesting Baja Concrete USA Corp. to admit or deny that Antonio Machado was not an employee of Baja Concrete USA Corp., ADMIT.

REQUEST FOR ADMISSION NO. 3: Admit Antonio Machado was not on Baja Concrete USA's payroll at any time.

RESPONSE:

Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined herein. To the extent that this Request for Admission No. 3 is requesting Baja Concrete USA Corp. to admit or deny that Antonio Machado was not on the payroll of Baja Concrete USA Corp. at any time, ADMIT.

REQUEST FOR ADMISSION NO. 4: Admit Antonio Machado did not exercise operational control over aspects of Baja Concrete USA's day-to-day functions.

RESPONSE:

Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined herein. To the extent that this Request for Admission No. 4 is requesting Baja Concrete USA Corp. to admit or deny that Antonio Machado did not exercise operational control over aspects of Baja Concrete USA Corp.'s day-to-day functions, ADMIT.

REQUEST FOR ADMISSION NO. 5: Admit that Antonio Machado did not have authority to make decisions on behalf of Baja Concrete USA.

RESPONSE:

Objection as to "Baja Concrete USA" on grounds that that phrase is ambiguous and not defined herein. To the extent that this Request for Admission No. 5 is requesting Baja Concrete USA Corp. to admit or deny that Antonio Machado did not have authority to make decisions on behalf of Baja Concrete USA Corp., ADMIT.

REQUEST FOR ADMISSION NO. 6: Admit that the check to Antonio Machado attached as **Exhibit A** was a repayment for a loan.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 7: Admit the loan Antonio Machado made to Baja Concrete USA Corp. was unrelated to any work performed by Workers at any of the Work Sites.

RESPONSE:

Objection to the word "Workers" as the definition appears to include persons who were not paid by Baja Concrete USA Corp. Objection to the phrase "unrelated to any work performed by Workers" on grounds that this phrase is vague and ambiguous. Objection to the phrase "the loan Antonio Machado made to Baja Concrete USA Corp." on grounds that this phrase is vague and ambiguous. To the extent that this Request for Admission No. 7 is asking for Baja Concrete USA Corp. to admit or deny that Antonio Machado loaned funds to Baja Concrete USA Corp. and that the loaned funds were not related to the performance of those Workers who were paid by Baja Concrete USA Corp. at the Work Sites, ADMIT.

REQUEST FOR ADMISSION NO. 8: Admit that the check to Antonio Machado in **Exhibit A** is unrelated to what the Workers were paid by Baja Concrete USA Corp. for work performed at any of the Work Sites.

RESPONSE:

Objection to the word "Workers" as the definition appears to include persons who were not paid by Baja Concrete USA Corp. To the extent that this Request for Admission No. 8 is asking Baja Concrete USA Corp. to admit or deny that the check to Antonio Machado shown in Exhibit A

hereto is unrelated to what persons, who form a subset of the defined term "Workers," whom were paid by Baja Concrete USA Corp., is unrelated to how much said persons were paid by Baja Concrete USA Corp., ADMIT.

REQUEST FOR ADMISSION NO. 9: Please admit that Claudia Penunuri signed the letter attached as **Exhibit B**.

RESPONSE:
DENY.

REQUEST FOR ADMISSION NO. 10: Please admit that **Exhibit B** is a true and correct copy of an October 21, 2018, letter signed by Claudia Penunuri.

RESPONSE:
DENY.

REQUEST FOR ADMISSION NO. 11: Please admit that **Exhibit C** is a true and correct copy of a business card You provided Roberto Soto Contreras.

RESPONSE:

DENY as stated. The definition of "You" is vague in that it includes "agents" of Baja Concrete USA Corp. but fails to define "agent." To the extent that this Request for Admission No. 11 is requesting Baja Concrete USA Corp. to admit or deny that the item shown in Exhibit C hereto depicts a business card provided to Roberto Soto Contreras by Baja Concrete USA Corp.,
ADMIT.

DATED this ____ day of February 2022.

ROCKE LAW Group, PLLC

Aaron V. Roche, WSBA No. 31525
Sara Kincaid, WSBA No. 55846
Rocke Law Group, PLLC
500 Union Street, Suite 909
Seattle, WA 98101
Telephone: (206) 652-8670
Fax: (206) 452-5895
Email: aaron@rockelaw.com
sara@rockelaw.com
Attorneys for Appellant

CERTIFICATION

I, Claudia Leticia Penunuri, am the appellant to whom these discovery requests are directed. I have read and reviewed the foregoing answers and objections to these discovery requests, know the contents thereof, and certify to the best of my knowledge, information, and belief, formed after a reasonable inquiry, that they are true and correct. I make this declaration under penalty of perjury under the laws of the State of Washington.

Executed at Miami-Dade County, Florida this 22 day of _____ February, 2022

Baja Concrete USA, Corp.

STATE OF FLORIDA)

) ss.

COUNTY OF MIAMI-DADE)

Claudia Leticia Penunuri, being first duly sworn on oath, deposes and says:

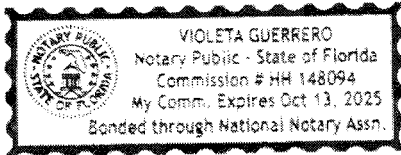
That she is the authorized representative of Appellant, Baja Concrete USA Corp, she has read the foregoing Appellant Antonio Machado's First Set Requests for Admission, knows the contents thereof, that the same is true of her own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters, she believes it to be true.



SUBSCRIBED AND SWORN TO before me this 22 day of February, 2022 by
CLAUDIA LETICIA PENUNURI



(print notary's name)



Notary Public in and for the State of Florida,

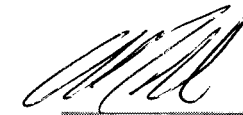
residing at 12080 SW 12TH AVENUE, MIAMI, FL 33186

My commission expires: OCTOBER 13, 2025

CERTIFICATION OF COUNSEL

The undersigned attorney for appellant has read and reviewed the foregoing interrogatories and requests for production and made objections in compliance with CR 26(g).

DATED this 22nd day of February, 2022.



Alex T. Larkin, WSBA
Attorney for Appellant

No. 36613

APPELLANT ANTONIO MACHADO'S FIRST ROCKE |

LAW Group, PLLC

REQUESTS FOR ADMISSION TO 500 Union Street,

Suite 909

APPELLANT BAJA CONCRETE USA CORP. Seattle, WA

98101

— Page 16 (206) 652-8670

EXHIBIT 4

1 **things like that.**

2 Q Okay. But I just wanted you to be clear on what I
3 mean when I say the word "workers."

4 When I ask about the relevant time period, I'm
5 referring to the period that the investigation
6 covered, which is February -- February 2018 through
7 August 2020.

8 A **Uh-huh.**

9 Q And when I say "Baja," I'm referring to Baja Concrete
10 USA Corp.

11 A **Yeah.**

12 Q Okay. So once we've got this straight, I would like
13 to move into the list of topics that's listed here on
14 Exhibit A on the screen.

15 So first I'm going to start with topic No. 1,
16 "Payment of wages to all workers listed on
17 Attachment B to the findings in this matter, including
18 the recording of hours, the method of determining
19 wages owed, withholding of wages, payment of bonuses,
20 and other deductions."

21 How did Baja keep track of how many hours the
22 workers worked?

23 A **We -- Baja didn't do that. Actually, Roberto**
24 **Contreras was in charge completely of all of the**
25 **employees, of all of the reporting.**

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,

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

1 Q Okay. But you're prepared today to speak on behalf of
2 Baja?

3 A Yeah.

4 Q Okay.

5 A But Roberto was the one on the site, and Roberto is
6 not part of Baja, even though he put there Baja, I
7 guess he's trying to charge, you know, for the labor
8 because we needed to process -- I have no idea. We
9 needed to process the payroll for those workers.

10 I mean, this is the invoices Roberto Contreras
11 did to collect -- to invoice Newway Forming. I mean,
12 when you see the first page, it says the project that
13 they were -- that he was billing and the amount of
14 hours and the amount of things. So this is, like, the
15 backup that Newway Forming requested to be attached to
16 the invoice. And so that signature belongs to Newway
17 Forming.

18 Q Okay. Who provided the invoice to Newway?

19 A Baja -- Roberto Contreras emailed directly to Kwynne
20 and -- the invoices. And, of course, Claudia was in
21 the emails.

22 Q Okay. Did someone at Baja have any role in the
23 generating of the invoice?

24 A I think he would talk to Claudia regarding this.

25 Q What would they talk about?

1 **A** I think just to let her know because he was the one on
2 the field, he was the one with the workers, he was the
3 one taking care of all of the labor, and he was also
4 preparing the invoices for her. And I think he needed
5 to let her know that that was the amount of
6 receivables or invoices.

7 **Q** Did Baja -- did anyone at Baja have any input into the
8 content of the invoices?

9 **A** I believe that was Claudia.

10 **Q** And what kind of input did she provide?

11 **A** I think it's just to let her know.

12 **Q** Did anyone --

13 **A** You know, Claudia lives in Florida, in Miami.

14 **Q** Okay. Did anyone at Baja verify that these time
15 sheets were correct?

16 **A** Did anyone in Baja verify that that time sheet was
17 correct?

18 **Q** Yeah.

19 **A** Well, I'm going to tell you, Roberto will -- I believe
20 Roberto will do that. He was the only one because
21 Claudia is in Miami.

22 So -- and I guess the signature of Newway
23 Forming, you are very fine, that that is correct.
24 Newway Forming is saying there, that is correct. They
25 are signing that.

1 doing the job there. And if he said those are the
2 hours, those are the hours. Now ...

3 Q Okay. Who determined the pay raises for the workers?

4 A Roberto Contreras did.

5 Q I'm sorry?

6 A Roberto Contreras determined the pay for the workers.

7 Q I'm not talking about how much they were owed, but I'm
8 talking about -- well, let's back up for a minute.

9 Were employees -- were the workers paid on an
10 hourly basis?

11 A At the beginning they were paid by a net. The workers
12 will want a certain amount of -- like, a peace -- you
13 know, like, for peace -- additional wage, you're going
14 to give me \$5,000 net and there was going to be 5,000
15 given to them in the net paycheck.

16 And so -- and there was a time that there was a
17 switch into hours and showing everything over time and
18 everything.

19 Q Okay. Can you describe to me what you mean by the
20 "net payment"?

21 A I understood that labor was difficult to find. And
22 the labor that Roberto -- Roberto who was finding
23 labor that they only will work with a net pay. That
24 means the company, Baja, will need to pay all taxes,
25 all over time, and everything included in that

1 paycheck. So it was all included in the payment. In
2 the payment that they will receive, everything was
3 included there.

4 Q How did you -- how did Baja determine the gross amount
5 for the workers, that they were owed?

6 A Well, because they will all have a bonus and they will
7 all have taxes paid on their pay stub.

8 Q Okay. Was the amount that they worked, was it based
9 the number -- the amount that they were paid, was that
10 based on the number of hours that they worked?

11 A Well, it was more than the hours that they worked.

12 Q Can you explain?

13 A Well, when you -- if they want to get 5,000 net, they
14 wanted to get 5,000 net, so for you to come 5,000 net,
15 you need to give them a bonus, you need to show taxes
16 paid. So they were overpaid to cover everything.

17 So some of the workers, you know, will get a
18 better deal that way. You know, that was it. But
19 there were no labor. Apparently -- apparently Roberto
20 hired these people with that agreement with them
21 because there was no way they would work otherwise.

22 And that's why -- that they later were switched.
23 But there was a big year that the company spent a lot
24 of money just giving the workers what they wanted,
25 everything included.

1 billed Newway for one amount -- for one rate of pay
2 and then the worker ended up receiving a lower rate of
3 pay, you said that the difference went to Baja's
4 expenses; is that correct?

5 **A Yeah.**

6 **Q** So are you saying that Baja billed Newway for an
7 amount that it stated to Newway would be used to pay
8 workers and, in fact, Baja used that money to pay
9 other expenses besides payroll expenses?

10 **A Well, everything -- you know, everything is included**
11 **in a rate. Everything. If I give you a worker and**
12 **I'm going to charge you for that worker, even profit**
13 **should be included in that rate and all the expenses**
14 **that I have for that worker, because Baja is a**
15 **business, it's a corporation. It has licensing, it**
16 **has all kinds of things. It has Mercedes Accounting,**
17 **it has all kinds of things that I need to have to pay**
18 **for payroll services, I mean, administrative. All**
19 **kinds of things.**

20 So that rate should include all kinds of expenses
21 in the invoice to Newway to be able to operate and
22 have the payroll, you have to include all of that in
23 there. And even profit. Nobody works for free.

24 **Q** So Baja billed -- are you saying that Baja billed
25 Newway for a certain amount for labor and used some of

Q Was Baja interacting with the workers -- was Roberto interacting with the workers on Baja's behalf?

A No. I think it was on his own.

Q You think it was what? I'm sorry.

A He's on his own.

Q Okay. Was anyone from Baja with supervisory authority present on the worksite with the workers?

A You mean from Baja?

Q Yes.

A No. It was just Roberto.

Q Did Baja give any direction to Roberto on interacting with the workers on the worksite?

A No.

Q Did Baja and Roberto agree that Roberto would be present at the worksite?

A No. I think Roberto knew that. He was hired to do all of that. So ...

Q He was hired to do -- can you tell me what he was hired to do what?

A The agreement that I talk all day, he's supposed to contract the labor, hiring, set up, everything. He was in charge of all of the labor. Not Baja. He was in charge. He was -- his own company, in other words. Remember, he's coming from Canada.

Q Okay. Did Baja put him in charge of the workers while

needed to report to work?

A No. Roberto will handle all of that directly with Newway Forming.

Q Was it part of Baja's agreement with Roberto that he would make sure that workers were at the worksite when they needed to be?

A You mean -- can you repeat the question?

Q Was it part of Baja's agreement with Roberto that Roberto would make sure the workers were on the worksite when they needed to work?

A No.

Q Okay. If a worker needed to go home sick, did someone from Baja need to give him permission?

A No. Roberto will handle that together with Newway Forming.

Q What if a worker was going to stay home for the day, who would they need to contact?

A Roberto.

Q When a worker went home sick, did Baja have a policy on when that worker could return?

A Baja, no. Roberto. Roberto will report them to payroll sick and in the summary and he will get paid whatever is needed.

Q Who determined what was needed when a worker called out sick?

1 **A Roberto.**

2 Q Did Baja pay a worker when a worker was calling out
3 sick?

4 **A Roberto report it, it was paid.**

5 Q What was the purpose of Baja -- of Roberto reporting
6 the worker was sick to Baja?

7 **A He was not reporting to Baja. None of that.**

8 Roberto will take care of the sick worker. Will
9 do whatever is necessary. And Roberto would report to
10 payroll to put three sic days and to inform that that
11 employee need to use sick pay, all that. Roberto will
12 report to payroll.

13 Q Did payroll have a policy on how to pay a person when
14 they were calling out sick?

15 **A You mean payroll?**

16 Q Yeah.

17 **A No. Payroll has no -- payroll is independent. It's
18 not like it receives accounts.**

19 Q Let me rephrase that. You're right.

20 Did Baja have a paid sick time policy during the
21 relevant time policy?

22 **A I believe there was one.**

23 Q If a worker called out sick, would they be paid or not
24 paid based on Baja's policy on sick workers?

25 **A Well, you know, Roberto was handling all of that, so**

1 I'm trying to remember. But Roberto was in charge
2 when they will get sick. Roberto will report if they
3 were sick a few days and they needed to pay sick pay,
4 Roberto would report to payroll.

5 So -- and the question will be, did Roberto knew
6 about any procedures and stuff? Well, we need to ask
7 Roberto.

8 Q How did payroll know what to do with a worker's pay
9 when a worker was calling out sick?

10 A I'm sorry. Could you clarify again or repeat?

11 Q How did the payroll company, Mercedes Accounting,
12 determine what a worker should be paid or not paid
13 when they called out sick?

14 A Mercedes Accounting payroll will never determine
15 anything. Roberto will report that in the summary and
16 that will go in the payroll.

17 Q Okay. Did someone from Baja determine when workers
18 would get to take meal and restroom breaks?

19 A I'm sorry. Could you --

20 Q Did someone from Baja determine when workers would
21 take meal and rest breaks?

22 A No. Roberto was with them and will determine that
23 together with Newway Forming because they were on the
24 site and on the projects for Newway Forming. So I
25 guess they would coordinate the breaks between them.

1 And so -- but he work as a peace work. So we
2 will -- you know, the hours -- Roberto will say too.
3 So it was all a combination. Okay, this is what
4 you're getting and this is the net and that's it.

5 Q So there was some kind of calculation that was done to
6 determine how much an employee was owed; correct?

7 A Yeah. And that was done between Roberto and the
8 worker. That was the agreement with them.

9 Q Did Baja -- how does Baja know that in every case
10 Roberto made an agreement with the worker?

11 A Well, Baja knows. Baja -- Roberto was the one
12 reporting. Roberto was the one hiring. Roberto was
13 the one disciplining, firing. He was on his own. And
14 this is the agreement, and he was doing all of that.

15 Remember, he comes an agreement with Canada. So
16 he will hire. He will do every single thing. The
17 only intervention from us would be that he reported a
18 summary. He gave it to payroll in Baja, and then Baja
19 will do the payroll and will pay everything that is
20 needed.

21 Q Whose responsibility was it to ensure that workers
22 were paid in accordance with the law?

23 A Roberto. Roberto needed to make sure, and Roberto
24 knew we -- not we. I myself explained to Roberto all
25 the things that he needed to pay to the government.

1 this document?

2 **A** **Yes, I am.**

3 **Q** And can you tell me what it is, please?

4 **A** That was a check that Claudia was out of the country
5 and Antonio Machado needed because there was a loan --
6 Antonio Machado gave to Baja Concrete in Canada.
7 There was a loan there at that time. I don't know too
8 much about it because that happened in Canada way
9 before me. But I know there was a payment of a loan
10 that he gave to Baja Concrete, and then he got paid.

11 As you noticed, that's not a pay stub. And
12 because she wasn't there, Claudia would write the
13 checks, right, and she wasn't available. There was no
14 check.

15 Then we -- our payroll system can write checks to
16 people. And then we issued this for him because he
17 needed the thing it says, "Receipts pending." That
18 means it was, like, an emergency reimbursement thing.
19 But I believe it was a loan.

20 **Q** And was it a loan from Baja or --

21 **A** Antonio Machado gave a loan to Baja.

22 **Q** Okay. Was it a loan to Baja or to Baja as an entity?

23 **A** Well, it was not Baja USA. That was a loan that
24 Antonio Machado gave Carlos and the people in Canada,
25 I don't know exactly how that worked. And so

1 **apparently Baja was paying him a portion of the loan**
2 **or whatever it was.**

3 Q Did this check -- was it cut out of Baja, the company
4 in Canada, or the Baja Concrete USA Corp.?

5 A **No, that's not Baja Concrete USA.**

6 Q Was there a loan made to Baja Concrete USA or a loan
7 made to Baja Concrete in Canada?

8 A **Well, we're talking about Carlos; right? And then**
9 **that would be charged to be a receivable of Baja**
10 **Concrete when we pay Machado because that's not a debt**
11 **for -- Baja Concrete USA owes to Antonio Machado.**
12 **Antonio Machado owes Carlos.**

13 And so it was promised through Baja Concrete USA
14 because Claudia was not available. Nobody is going to
15 be wiring funds or whatever the way he was getting
16 paid that loan. I didn't see anything. This is the
17 only thing that I remember a check that was issued.
18 And that was because Claudia was not available, and he
19 really needed to get paid.

20 So that was part of the loan. It's a loan
21 payment.

22 Q Does Baja normally -- if it cut the check to an
23 individual, does it request documentation to
24 substantiate the amount owed?

25 A **Yes. But that check was requested by Claudia to give**

1 A You mean money from Baja for Baja Concrete employees
2 and the Baja Concrete payroll, you're saying any Baja
3 Concrete payroll employees, how -- what do you mean
4 they get money to Newway?

5 Q To Newway employees.

6 A To Newway employees? I don't know what you're saying.
7 What do you mean?

8 Q I'm just trying to understand how money flowed back
9 and forth between --

10 A There's absolutely no money given from employee here
11 and employee there. If they do it, we do it in a
12 loan. We won't know about it.

13 Q Right. For this check to Machado, Antonio Machado?

14 A Well, he's not an employee of -- he's not a Baja
15 Concrete payroll employee, Machado, no he's not. He
16 was just somebody that helped Carlos in Canada. He
17 probably gave a little money. And I have no idea
18 because I'm not in Canada and I don't have anything
19 there. I don't recall any documents. I will need to
20 think about it.

21 But for sure we requested about the loan. We
22 probably have something. You now, that's how I know
23 that he gave the loan to Carlos. And so the agreement
24 probably was that Baja Concrete would pay. I don't
25 know. But that's the only thing, this check.

1 section of this document. And it's titled "Section
2 III Payment."

3 Do you see that here?

4 **A Yes.**

5 Q And then going down to Question 3, the question says,
6 "Have your employees ever worked more than 40 hours in
7 a workweek during the past three years?"

8 Do you see that question?

9 **A Yes.**

10 Q And what was your response to that?

11 **A The one that I put in there, "Prior years included as
12 compensations" --**

13 MR. LARKIN: It's just a yes-or-no
14 question.

15 **THE WITNESS: Oh, okay.**

16 So have you ever worked more than 40 hours in a
17 workweek?

18 I believe some of them did.

19 Q (By Ms. Kincaid) And in Subsection A, can you read
20 the additional response that you included there?

21 **A "Prior years included as compensations currently shown
22 on a pay stub. Agreement with employees change due to
23 prior agreement was too costly for company."**

24 Okay. So I was understanding this -- you see,
25 the agreement that Roberto made with employees was to

1 pay the amount that included everything. That's why
2 they were getting bonus, and that's why they -- if you
3 do the calculations, all the employees got paid
4 correctly and accurately. All of them. Even if you
5 go and put over time, they will have more money. I
6 calculated this for about two or three employees.

7 The employees will get even more money, including
8 overtime, they will get extra money in their pockets
9 because the way Roberto and the labor and the
10 employees agree was to have a fixed amount.

11 Later on, that was changed to just the hourly
12 rate and the overtime, later.

13 Q And so when you came --

14 A At the beginning it was this way. This was too
15 costly. To do it this way was too costly for the
16 company. The company was paying a lot of money, and a
17 lot of money reporting to IRS and L&I and all of
18 those, a lot of money.

19 And that's why they were probably changed to --
20 and "they," I mean Roberto, changed to the hourly rate
21 and the overtime because hourly rate and overtime is
22 less costly than the full amount he was paying them
23 before. And that's what he says there, employees
24 changed due to prior agreement was too costly for
25 company, and it was too costly, yeah. Every employee

1 got a very good deal with extra money. Paid overtime,
2 paid everything.

3 MR. LARKIN: Okay.

4 THE WITNESS: I got excited about
5 this. I'm sorry.

6 MS. KINCAID: That's all right.

7 THE WITNESS: I know they change it
8 to the way it should have been in the very beginning.
9 But the employees do not want to work. The labor did
10 not want to work unless it was for the fixed amount.
11 And that was benefit for them but no benefit for the
12 company. So I'm glad later on it was changed.

13 Q (By Ms. Kincaid) Okay. And so if I understood your
14 testimony from earlier, Roberto was an employee of
15 Baja Canada; correct?

16 A An employee, no. I mentioned that I believe he's more
17 like a partner, not an employee of Canada. I believe
18 it's more like a partner because he had power for
19 doing all of this.

20 Q But you also said earlier that you weren't sure
21 whether he was a partner; you just assumed that based
22 on certain information?

23 A Based on the power that he had, the decisions he was
24 making, I don't think -- I don't think he ever an
25 employee of Baja Ltd. in Canada. No, I think he's

1 probably with the deductions in that report that you
2 guys show earlier. I'm assuming that's the attach
3 report.

4 MR. LARKIN: Just read it.

5 THE WITNESS: "Per attached report,
6 you can see deductions are either payroll advances or
7 personnel items purchased by the company credit card
8 and deducted in the employee paychecks per their
9 request. Some employees run out of funds and request
10 the supervisor personal help with shoes, flight
11 tickets, et cetera, and the supervisor is using the
12 company credit card for this type of payroll advances.
13 We do not have any complaints from any employee
14 regarding the deductions. The use of the company
15 credit card to purchase items for employees is
16 discontinued. Currently, the company is giving
17 payroll advances and loans to employees if they
18 qualify. Company policy does not include benefits for
19 any living costs."

20 Q Okay. Thank you, Ms. De Armas. You can stop reading
21 there.

22 So you mentioned a supervisor in this paragraph.

23 Who are you referring to there?

24 A Well, when they are -- the laborers, the people that
25 is hired, there are hired people. They have different

1 levels. We see this in payroll. We see what is the
2 labor, we see what is the finishers, we see what is
3 the helper, and we see what is supervisor. So some of
4 them were supervisors.

5 Q Okay. So when you say "some of them," you're saying
6 some of the Baja USA employees were supervisors?

7 A Yeah. The ones that we run in payroll. Some of them
8 supervisors, were in charge.

9 Q And who was running payroll?

10 A Baja -- Roberto had sometimes people in two projects
11 at the same time. So there was somebody in charge in
12 one, and he probably was at the other one. I don't
13 know. But they were supervisor, personal among those
14 employees.

15 Q And so you say the supervisor is using the company
16 credit card.

17 So did someone other than Roberto Contreras have
18 access to Baja USA's credit card?

19 A Yeah.

20 Q And who would that have been?

21 A Well, I'm trying to remember the name, but I can give
22 it to you. I can see the records. Because there
23 aren't very many people, so I need to -- I think one
24 of them -- wow, it's a guy from -- let me see if I can
25 remember his name. But if I review the payroll, I can

EXHIBIT 5

Concrete Ltd.

This is a little bit confusing; right? It's Baja Concrete Ltd. It was Roberto giving all of the information for payroll.

Q Okay. In order for you to process payroll, you got the information from Roberto?

A Yes.

Q Okay. And did that information that was given to you by Roberto, did it include the employees' hours worked?

A Yes.

Q Now, in reviewing some of the items that were given to OLS and that have been provided in discovery, I've noticed that some of the pay stubs indicate that workers were paid by the hour, by piece rate, and by bonuses.

A Correct.

Q So how did you, either Mercedes De Armas or Mercedes Accounting, how did you determine what each worker should be paid for hours worked?

A Roberto, in the payroll summaries, will give us all of the information. Who was piecework, who was hourly.

I recall at the beginning all of them, or most of them, were by piecework because workers, apparently they not wanting to work with a net paycheck and they

1 just wanted a paycheck that include everything,
2 everything included. So they got more than the pay
3 rate. They got paid everything in there.

4 And the bonus was just to cover taxes and to
5 cover overtime and to -- just to give them a higher --
6 because when you get \$5,000 net, you have to do a
7 gross for \$7,000 gross to be able to deduct all of the
8 taxes. You know, the employee just wanted to work by
9 piecework.

10 It's, like -- it's a small contract. I'll give
11 you this work. I'll do this for you for \$3,000.
12 Everything included.

13 Roberto will keep track of the hours, I believe,
14 and then just give it to us. We had every detail, and
15 I provided all of the payroll summaries to Alex today
16 with all of the details he gave us.

17 Q Okay. And so you got hours worked information from
18 Roberto.

19 And where did you get the piece rate amounts from
20 or piecework, I believe, it's called? Where did you
21 get those amounts from?

22 A Roberto will provide us that.

23 Q Okay. And where did you get the information about
24 what the bonus should be?

25 A In the payroll summaries, sometimes -- sometimes he

1 distribute these beforehand; right?

2 MS. SYLVESTER: No.

3 MR. LARKIN: Okay.

4 Q (By Ms. Sylvester) All right. So we were talking
5 about Mr. Machado. And if you look at Plaintiff's --
6 I'm sorry, Exhibit 1, it's a payment that was made to
7 Antonio Machado.

8 And do you see the date on there as
9 August 8, 2019, in the amount of 4878. And you can
10 see that the memo line says "Receipts pending" with no
11 further details.

12 Now, do you recognize this paycheck?

13 A Yes, I do.

14 Q And so Mercedes Accounting processed this check?

15 A We did.

16 Q Do you know if this was a monthly payment to
17 Mr. Machado?

18 A No.

19 Q No, you don't know, or, no, it was not a monthly
20 payment?

21 A That was not a monthly payment. That's the only check
22 in the records that was written through payroll system
23 for Antonio Machado.

24 Q Okay. So were you ever aware of whether Mr. Machado
25 was supposed to get 8 percent of the amount paid to

workers each month?

A What -- could you repeat the question?

Q Yes.

8 percent.

A What do you mean? A percent of what?

Q 8, as in ocho.

A Ocho.

Q Percent.

A Could you repeat the question? That if I know -- the whole question.

Q Okay. Do you know whether Mr. Machado was supposed to get 8 percent of the amount paid to workers each month?

A No, not at all. I was told this is a check that was requested by Claudia, and it was a loan, a loan payment. She was out of the country. It was a loan payment. And I learned later that that loan was an agreement and was given in Canada to Carlos.

Q Okay. So now on the memo line, it says "Receipts pending."

Did you ever receive a receipt for the payment?

A No. The person who processed this check in the payroll didn't know and didn't have anything. Just somebody. And then she put that memo, thinking maybe there is a document or something for this. And that's

1 Q Well --

2 A -- to complain.

3 Q I think it would be obvious if it was in writing
4 somewhere.

5 So was it in writing somewhere from the employee
6 saying, I authorize you to take out X, Y, Z deduction
7 from my paycheck? Do you have that?

8 A Yeah. But we were not in charge of that. Roberto is.
9 The person who can have the notes is Roberto, because
10 Roberto was the one purchasing the stuff for them, you
11 know.

12 Q Okay. So your business did not collect any consent
13 from an employee in writing as to the deductions?

14 A Well, they are not my employees.

15 Q I understand that.

16 So is the answer no?

17 A You mean if there is anything in writing? I really
18 don't know because Roberto may have something. I
19 don't know. They work directly with Roberto. Roberto
20 was just reporting to the payroll, to us, to Mercedes
21 Accounting, about those advances and to be deducted.
22 And they are on the payroll summaries.

23 Q Right.

24 So did the payroll summary contain something in
25 writing from the employee that they consent to the

EXHIBIT 6

Period	Amount Baja Invoiced Newway	Pay Date for Employees	Net Pay to Employees	ER Taxes	Month	Amount Baja Invoiced Newway for that Month	Employee total pay for month	Employer taxes for month	Profit for Month (Baja payment - employee pay)
2/20/18-3/5/18	\$ 7,832.00	1/19/2018	\$ 1,008.20	\$ 281.26	January-18	\$ -	\$ 1,008.20	\$ 281.26	
3/12/18-3/17/18	\$ 9,328.00	2/2/2018	\$ 3,024.60	\$ 843.78	February-18	\$ 7,832.00	\$ 6,049.20	\$ 1,687.50	\$ 1,782.80
3/26/18-4/7/18	\$ 9,328.00	2/16/2018	\$ 3,024.60	\$ 843.78	March-18	\$ 18,656.00	\$ 4,006.58	\$ 1,125.04	\$ 14,649.42
4/23/18-5/5/18	\$ 9,328.00	3/2/2018	\$ 2,003.29	\$ 562.52	April-18	\$ 18,656.00	\$ 4,787.81	\$ 1,523.91	\$ 13,868.19
4/9/18-4/21/18	\$ 9,328.00	3/16/2018	\$ 2,003.29	\$ 562.52	May-18	\$ 18,788.00	\$ 4,688.75	\$ 1,344.45	\$ 14,099.25
5/7/18-5/19/18	\$ 8,756.00	4/13/2018	\$ 2,003.29	\$ 554.12	June-18	\$ 26,316.00	\$ 5,613.69	\$ 2,824.67	\$ 20,702.31
5/20/18-6/2/18	\$ 10,032.00	4/27/2018	\$ 2,784.52	\$ 969.79	July-18	\$ 31,692.00	\$ 4,548.31	\$ 958.29	\$ 27,143.69
6/4/18-6/16/18	\$ 12,720.00	5/11/2018	\$ 1,819.25	\$ 695.73	August-18	\$ 17,360.00	\$ 6,095.69	\$ 1,229.30	\$ 11,264.31
6/18/18-6/30/18	\$ 13,596.00	5/25/2018	\$ 2,869.50	\$ 648.72	September-18	\$ 29,340.00	\$ 3,582.31	\$ 713.34	\$ 25,757.69
7/15/2018	\$ 9,504.00	6/7/2018	\$ 2,744.19	\$ 2,175.95	October-18	\$ 48,452.00	\$ 3,593.83	\$ 716.76	\$ 44,858.17
7/30/2018	\$ 10,440.00	6/22/2018	\$ 2,869.50	\$ 648.72	November-18	\$ 64,592.00	\$ 29,772.96	\$ 5,661.44	\$ 34,819.04
7/30/18-8/11/18	\$ 11,748.00	7/6/2018	\$ 2,869.50	\$ 648.72	December-18	\$ 119,473.00	\$ 55,019.42	\$ 12,678.66	\$ 42,340.76
8/13/18-8/25/18	\$ 7,400.00	7/20/2018	\$ 1,678.81	\$ 309.57	January-19	\$ 89,797.00	\$ 47,154.48	\$ 6,661.50	\$ 42,642.52
8/27/18-9/8/18	\$ 9,960.00	8/3/2018	\$ 1,856.94	\$ 354.95	February-19	\$ 39,199.00	\$ 108,754.58	\$ 20,133.92	\$ (69,555.58)
9/10/18-9/22/18	\$ 13,380.00	8/17/2018	\$ 2,407.27	\$ 505.69	March-19	\$ 78,622.00	\$ 110,725.63	\$ 22,624.33	\$ (32,103.63)
9/24/18-10/6/18	\$ 15,960.00	8/31/2018	\$ 1,831.48	\$ 368.66	April-19	\$ 83,802.00	\$ 73,175.77	\$ 14,763.76	\$ 10,626.23
10/8/18-10/20/18	\$ 20,560.00	9/14/2018	\$ 1,750.83	\$ 344.68	May-19	\$ 85,270.00	\$ 73,200.48	\$ 14,303.37	\$ 12,069.52
10/22/18-11/3/18	\$ 27,892.00	9/28/2018	\$ 1,831.48	\$ 368.66	June-19	\$ 128,945.00	\$ 75,358.48	\$ 14,712.80	\$ 53,586.52
11/5/18-11/17/18	\$ 36,610.00	10/12/2018	\$ 1,831.48	\$ 368.66	July-19	\$ 195,083.00	\$ 55,382.74	\$ 10,311.16	\$ 139,655.26
11/19/18-12/1/18	\$ 27,982.00	10/26/2018	\$ 1,762.35	\$ 348.10	August-19	\$ 153,968.00	\$ 90,603.23	\$ 17,481.12	\$ 63,364.77
12/2/18-12/15/18	\$ 43,991.00	11/9/2018	\$ 1,831.48	\$ 728.56	September-19	\$ 163,336.00	\$ 65,789.48	\$ 12,085.57	\$ 97,546.52
12/16/18-12/29/18	\$ 32,771.00	11/23/2018	\$ 27,941.48	\$ 4,932.88	October-19	\$ 141,739.00	\$ 72,883.48	\$ 12,729.62	\$ 68,855.52
		12/7/2018	\$ 22,523.21	\$ 5,125.96	November-22	\$ 108,394.00	\$ 68,437.48	\$ 12,159.74	\$ 39,956.20
12/30/18-1/12/19	\$ 42,711.00	12/17/2018	\$ 5,176.00	\$ 1,049.20	December-19	\$ 119,391.00	\$ 68,500.52	\$ 11,737.69	\$ 50,890.48
1/14/19-1/26/19	\$ 44,214.00	12/21/2018	\$ 27,320.21	\$ 6,503.50	January-20	\$ 138,284.00	\$ 106,690.40	\$ 16,453.07	\$ 50,890.48
1/28/19-2/9/19	\$ 45,583.00	1/4/2019	\$ 20,047.74	\$ 513.58	February-20	\$ 181,735.00	\$ 88,959.76	\$ 13,119.09	\$ 92,775.24
2/10/19-2/23/19	\$ 39,199.00	1/18/2019	\$ 24,263.74	\$ 5,811.70	March-20	\$ 79,690.00	\$ 90,647.63	\$ 13,790.25	\$ (10,957.63)
3/11/19-3/23/19	\$ 40,996.00	1/23/2019	\$ 1,203.00	\$ 145.52	April-20	\$ -	\$ 27,873.76	\$ 4,487.50	\$ (27,873.76)
3/25/19-4/6/19	\$ 37,626.00	1/30/2019	\$ 1,640.00	\$ 190.70	May-20	\$ 25,767.00	\$ 33,366.80	\$ 5,168.04	\$ (7,599.80)
4/8/19-4/20/19	\$ 41,650.00	2/1/2019	\$ 34,713.18	\$ 7,904.61	June-20	\$ 107,227.00	\$ 35,427.66	\$ 5,568.86	\$ 71,799.34
4/22/19-5/4/18	\$ 42,152.00	2/15/2019	\$ 46,890.96	\$ 9,078.58					
5/6/19-5/18/18	\$ 39,200.00	2/27/2019	\$ 27,150.44	\$ 3,150.73					
5/20/19-6/1/19	\$ 46,070.00	3/1/2019	\$ 18,679.74	\$ 4,203.24					
6/3/19-6/16/19	\$ 77,645.00	3/15/2019	\$ 49,511.82	\$ 9,982.26					
6/17/19-6/29/19	\$ 51,300.00	3/29/2019	\$ 42,534.07	\$ 8,438.83					
7/1/19-7/13/19	\$ 49,678.00	4/12/2019	\$ 41,040.03	\$ 7,994.12					
7/15/19-7/28/19	\$ 72,798.00	4/26/2019	\$ 32,135.74	\$ 6,769.64					
7/29/19-8/11/19	\$ 72,607.00	5/10/2019	\$ 38,808.74	\$ 7,359.62					
8/12/19-8/24/19	\$ 80,060.00	5/24/2019	\$ 34,391.74	\$ 6,943.75					
8/26/19-9/7/19	\$ 73,908.00	6/7/2019	\$ 35,069.74	\$ 7,061.40					
9/9/19-9/21-19	\$ 83,289.00	6/21/2019	\$ 39,848.74	\$ 7,651.40					
9/23/19-10/5/19	\$ 80,047.00	6/28/2019	\$ 440.00	\$ -					
10/7/19-10/18/19	\$ 65,852.00	7/5/2019	\$ 32,385.00	\$ 5,705.90					
10/20/19-11/2/19	\$ 75,887.00	7/19/2019	\$ 22,997.74	\$ 4,605.26					
11/4/19-11/16-19	\$ 59,109.00	8/2/2019	\$ 28,004.74	\$ 5,704.51					
11/18/19-11/30/19	\$ 49,285.00	8/16/2019	\$ 31,599.74	\$ 5,862.50					
12/2/19-12/14-19	\$ 67,798.00	8/30/2019	\$ 30,998.75	\$ 5,914.11					
12/16/19-12/28/19	\$ 51,593.00	9/13/2019	\$ 29,930.74	\$ 5,538.21					
		9/16/2019	\$ 1,098.00	\$ 221.11					
1/13/20-1/25/20	\$ 66,595.00	9/27/2019	\$ 34,760.74	\$ 6,326.25					
1/27/20-2/8/20	\$ 71,689.00	10/11/2019	\$ 40,397.74	\$ 6,801.36					
2/10/20-2/22/20	\$ 75,883.00	10/25/2019	\$ 32,485.74	\$ 5,928.26					
2/25/19-3/9/19 (2020?)	\$ 40,461.00	11/8/2019	\$ 36,919.74	\$ 6,463.91					
2/24/20-3/7/20	\$ 65,391.00	11/22/2019	\$ 31,517.74	\$ 5,695.83					
3/9/20-3/21/20	\$ 53,831.00	12/6/2019	\$ 26,711.78	\$ 4,977.90					
3/23/20-3/25/20	\$ 13,723.00	12/17/2019	\$ 7,235.00	\$ 726.24					
3/31/20-5/16/20	\$ 12,136.00	12/20/2019	\$ 34,553.74	\$ 6,033.55					
5/18/20-5/30/20	\$ 25,767.00	1/3/2020	\$ 32,784.80	\$ 6,316.46					
6/1/20-6/15/20?	\$ 29,822.00	1/17/2020	\$ 29,638.80	\$ 5,213.57					
6/15/20-6/27/20	\$ 38,117.00	1/31/2020	\$ 44,266.80	\$ 4,923.04					
6/29/20-7/11/20	\$ 39,288.00	2/14/2020	\$ 40,560.80	\$ 6,129.28					
		2/28/2020	\$ 48,398.96	\$ 6,989.81					
		3/13/2020	\$ 45,835.71	\$ 6,866.94					
		3/27/2020	\$ 44,811.92	\$ 6,923.31					
		4/10/2020	\$ 17,593.48	\$ 2,854.07					
		4/24/2020	\$ 10,280.28	\$ 1,633.43					
		5/1/2020	\$ 1,800.00	\$ -					
		5/8/2020	\$ 13,180.32	\$ 2,114.80					
		5/22/2020	\$ 18,386.48	\$ 3,053.24					
		6/5/2020	\$ 35,427.66	\$ 5,568.86					
		Total Employee Net Pay:	\$ 1,421,699.11						
								() = deficit	
							Total Profit	\$	897,853.83

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on today's date.

1
2 I declare under penalty of perjury under the laws of the United States that the foregoing is
3 true and correct to the best of my belief.

4 Signed and DATED this 3rd day of August 2022, in Seattle Washington.

5
6 *s/Elena Maltos*
7 Elena Maltos, Legal Assistant
8 ROCKE | LAW Group, PLLC
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