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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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

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

1. I am one of the Assistant City Attorneys appearing for Respondents, the City of Seattle and the Seattle Office of Labor Standards, in the above-captioned matter. I am over the age of 18 and make this declaration based on personal knowledge. I am competent to testify as to the matters stated below.
2. The attached documents are true and correct copies of the following: Relevant excerpts from the transcript of the Deposition of Antonio Machado, taken on Tuesday, February 1, 2022. This document is attached as **Exhibit A**.

Signed this 17th day of August, 2022, in Kent, Washington.

/s/ Lorna S. Sylvester
LORNA S. SYLVESTER

2/1/2022 Deposition Excerpts:
Antonio Machado

EXHIBIT A
TO DECLARATION OF LORNA S. SYLVESTER

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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

Videotaped Deposition Upon Oral Examination
of
ANTONIO MACHADO

Taken at Remotely via Zoom

DATE: Tuesday, February 1, 2022

REPORTED BY: Jamie Booker, RPR, CCR 3281

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24	Also Present: CLAUDIA PENUNURI	
25		

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1 REMOTELY VIA ZOOM; TUESDAY, FEBRUARY 1, 2022

2 9:00 A.M.

3 --o0o--

4

5 VIDEOGRAPHER: Good morning. We are now on the

6 record. The time now is 9:03 a.m. on Tuesday, February 1,

7 2022.

8 This is Volume I, Media Unit I of the

9 video-recorded deposition of Antonio Machado in the matter

10 of the Appeal of Baja Concrete USA Corporation, Roberto

11 Contreras, Newway Forming Incorporated, and Antonio

12 Machado from a final order of the decision issued by the

13 Director Seattle Office of the Labor Standards. The case

14 number -- the case number is LS-21-004.

15 This deposition is being held via Zoom. My name

16 is Allison Borgida. I am the videographer today from B&A

17 Litigation Services. The court reporter is Jamie Booker,

18 also from B&A Litigation Services.

19 Will counsel and all present please note their

20 appearances and affiliations for the record, and then the

21 court reporter may swear in the witness.

22 ERICA FRANKLIN: Good morning. Erica Franklin

23 for the City of Seattle.

24 JEREMIAH MILLER: Jeremiah Miller for the City

25 of Seattle.

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1 SARA KINCAID: Good morning. This is Sara

2 Kincaid.

3 JASON WANDLER: Sorry.

4 VIDEOGRAPHER: Go ahead, Jason --

5 JASON WANDLER: Jason Wandler her for Newway

6 Forming.

7 ALEX LARKIN: And Alex Larkin for Baja Concrete

8 USA Corp.

9 VIDEOGRAPHER: And, Sara, you might want to say

10 yours again just because he was the same time.

11 SARA KINCAID: Yeah. Sorry. I didn't want to

12 interrupt anybody again.

13 This is Sara Kincaid for Antonio Machado.

14 VIDEOGRAPHER: All right.

15 Jamie.

16 COURT REPORTER: We have someone named Claudia.

17 VIDEOGRAPHER: Oh, yep.

18 Claudia, if you could just introduce yourself

19 for the record. Or if someone wants to introduce her.

20 ALEX LARKIN: Claudia Penunuri. She's the --

21 the governor or the owner of Baja Concrete USA Corp. A

22 member, not the owner. Sorry.

23

24 ANTONIO MACHADO, deponent herein, being

25 first duly sworn on oath,

Page 6

1 was examined and testified
2 as follows:
3
4 VIDEOGRAPHER: Ms. Franklin, you are muted, just
5 FYI.
6 ERICA FRANKLIN: Sure. So let's get started.
7
8 EXAMINATION
9 BY ERICA FRANKLIN:
10 Q. Good morning. Could you please state your full
11 name and address for the record.
12 VIDEOGRAPHER: Mr. Machado, are you able to hear
13 us?
14 **THE WITNESS: Yes. Yes. Go ahead.**
15 VIDEOGRAPHER: Okay.
16 BY ERICA FRANKLIN:
17 Q. Mr. Machado, can you please state your full name
18 and address for the record.
19 **A. So can you repeat? I -- I can't hear too good.**
20 **I'm going to turn the volume up a little bit.**
21 Q. Thank you.
22 Can you please state -- what is your full name?
23 **A. My full name is Antonio Fernando DaSilva**
24 **Machado.**
25 Q. Thank you.

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1 for the City of Seattle. And I am here to take your
2 deposition today.
3 **A. Okay.**
4 Q. Is there any reason, such as stress or a
5 physical or mental condition or the influences of
6 substances that would prevent you from testifying
7 truthfully today?
8 **A. I can barely hear you. You know, you broke up.**
9 **I'm going to turn the volume on again. Okay.**
10 **You want to try again, please?**
11 Q. Is there any reason that would prevent you from
12 telling the truth today such as substance or a physical
13 condition or a mental condition?
14 **A. What do you mean by -- is there any reason**
15 **for -- physical -- physical conditions? That -- that's**
16 **what you mean?**
17 Q. Is there anything today that would make it so
18 you couldn't tell the truth in your deposition?
19 **A. I'm -- I'm -- I'm going to tell you nothing but**
20 **the truth. Any questions you guys asking me, I'll tell**
21 **you nothing but the truth.**
22 Q. Thank you. I appreciate it.
23 And are there others in the room with you today?
24 **A. Anybody in the room? No, I'm -- I'm by myself.**
25 Q. Thank you.

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1 ERICA FRANKLIN: Ms. Booker, do you need any of
2 that spelled?
3 COURT REPORTER: Yes.
4 BY ERICA FRANKLIN:
5 Q. Can you go ahead and please spell your first
6 name and your middle names and your last name.
7 **A. Okay. My first name is Antonio, my middle name**
8 **is Fernando, and my last name, it's Machado.**
9 COURT REPORTER: I'm sorry, sir. There was
10 another name you said before Machado.
11 **THE WITNESS: Oh, you know, us -- you know,**
12 **Portuguese, we have a little name. It's Antonio Fernando**
13 **DaSilva Machado. You know, that's my full name.**
14 COURT REPORTER: Could you spell that DaSilva,
15 please.
16 **THE WITNESS: Can I spell -- spell the -- the**
17 **whole name is Antonio Fernando DaSilva Machado.**
18 COURT REPORTER: Can you spell DaSilva, please.
19 **THE WITNESS: Yes. D-a-S-i-l-v-a.**
20 COURT REPORTER: Thank you.
21 **THE WITNESS: That's my mom's, you know, before**
22 **she got married; so.**
23 BY ERICA FRANKLIN:
24 Q. Thank you, Mr. Machado.
25 My name is Erica Franklin, and I am an attorney

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1 Have you ever been deposed before?
2 **A. Where in the police before?**
3 Q. Have you ever been in a deposition like this
4 before?
5 **A. No. I'm --**
6 Q. -- this your first time?
7 **A. I never had any problem with the law or --**
8 **never, ever in my life. Never.**
9 Q. And so let me just give you a -- a little
10 overview of how a deposition works.
11 **A. Okay.**
12 Q. So we're here today so that I can find out about
13 what you know about this case. So I am going to ask you
14 questions, and you will need to provide answers to them
15 that are direct and the answer the full question.
16 **A. Okay.**
17 Q. So, if you will recall, you were put under oath
18 which means that you are required to provide truthful
19 answers to each of my questions.
20 And this -- a deposition is a little bit
21 different than a regular conversation.
22 **A. Okay.**
23 Q. In a -- in a regular conversation, it's common
24 for people to talk over one another, to interrupt each
25 other.

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1 think just one more page. Okay. And let's scroll down so
2 we can see the Bates number.
3 So now I'm asking about the page of this exhibit
4 with the Bates number ending in 390. If we could just
5 scroll up so the witness can see it.
6 BY ERICA FRANKLIN:
7 Q. Can you -- can you tell me what this is, please?
8 **A. No. I don't -- I don't know. Like I said, I**
9 **cannot answer things, you know, I wasn't involved with. I**
10 **don't know. I don't know --**
11 Q. Okay. Can -- does this appear to be a sheet
12 reflecting how many hours workers worked?
13 SARA KINCAID: Objection to the form of the
14 question.
15 JASON WANDLER: I join the objection.
16 ALEX LARKIN: I join as well.
17 ERICA FRANKLIN: Okay. Can we just scroll to
18 the right so we can see the very far right of the -- thank
19 you.
20 Actually, let's -- I'm sorry. Let's scroll --
21 let's scroll down to the very last two pages of this
22 exhibit, please.
23 Oh, thank you. Rotating would be much more
24 helpful.
25 And this should be Bates number -- it's hard to

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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?

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1 tell from here -- 3 -- could we scroll down so we could
2 see the Bates number on -- it's -- okay. I'm referring to
3 399 is the last three digits of the Bates number.
4 BY ERICA FRANKLIN:
5 Q. And, Mr. Machado, can you see the column --
6 the -- the very right-hand column of this document?
7 ALEX LARKIN: Same objection.
8 SARA KINCAID: I'll join that objection.
9 BY ERICA FRANKLIN:
10 Q. You can still answer.
11 **A. Like I said, I don't know anything. When it**
12 **comes to payroll and that -- like I -- I -- I don't have a**
13 **clue, and I don't know anything about it.**
14 **Like I -- this got to be between our head office**
15 **and Tom Grant. I -- I do not -- I cannot answer things I**
16 **do not -- you know, I do not know.**
17 Q. Okay. Did workers who were working for -- that
18 were being paid by Baja Concrete, do they sometimes work
19 overtime --
20 SARA KINCAID: Objection --
21 BY ERICA FRANKLIN:
22 Q. -- more than 40 hours in a week?
23 **A. Sometimes they work over 40 hours, yes.**
24 Q. And were they paid an overtime rate --
25 **A. I --**

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1 **A. No. No. No, I don't. No.**
2 Q. It says that -- in the description field, it
3 says Construction consulting via Zell. Do you know what
4 Zell is referring to? Z-e-l-l?
5 ALEX LARKIN: Object to form.
6 JASON WANDLER: Join.
7 ALEX LARKIN: The witness is not familiar with
8 this document.
9 BY ERICA FRANKLIN:
10 Q. Have you seen a document -- Mr. Machado, have
11 you seen a document that was similar to this -- kind of
12 the same type of document?
13 **A. I never saw any documents from Baja. I don't**
14 **have access to, you know -- to their business. I -- I**
15 **don't know.**
16 Q. Okay. Let's turn to the exhibit that was
17 originally -- I'm sorry. Let's mark that as Exhibit 2.
18 (Deposition Exhibit 2 was marked for
19 identification.)
20 ERICA FRANKLIN: And, if we could please turn to
21 the exhibit that was originally marked C and mark that as
22 Exhibit 3.
23 (Deposition Exhibit 3 was marked for
24 identification.)
25 VIDEOGRAPHER: Sorry. Which -- which exhibit?