

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:

**BAJA CONCRETE USA CORP.,  
ROBERTRO CONTRERAS, NEWWAY  
FORMING, INC., and ANTONIO  
MACHADO**

from a Final Order of the Decision issued  
by the Director, Seattle Office of Labor Standards

Hearing Examiner File:

Nos.

LS-21-002

LS-21-003

LS-21-004

DECLARATION OF NICOLE E. WOLFE  
IN SUPPORT OF APPELLANT  
NEWWAY FORMING INC.'S REPLY  
TO BAJA'S OPPOSITION

I, Nicole E. Wolfe, declare and state as follows:

1. I am over the age of 18 years old and make this Declaration based upon my personal knowledge of the facts contained herein.
2. I am an attorney with Oles Morrison Rinker & Baker LLP and counsel for Newway Forming Inc.
3. Attached hereto as **Exhibit 1**, are true and correct copies of Baja Concrete USA Corp Employee Details Sheet, Bates No. APPBAJA0004
4. Attached hereto as **Exhibit 2**, are true and correct copies of a Baja Concrete USA business card, Bates No. SEATTLE-OLS-0985.
5. Attached hereto as **Exhibit 3**, are relevant excerpts from the transcript of the 30(b)6 deposition of Newway Forming Inc., dated May 5, 2022.

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6. Attached hereto as **Exhibit 4**, are relevant excerpts from the transcript of the deposition of Mercedes De Armas, dated May 11, 2022.

7. Attached hereto as **Exhibit 5**, are relevant excerpts from the transcript of the deposition of 30(b)(6) Baja Concrete USA Corp., dated April 26, 2022.

8. Attached hereto as **Exhibit 6**, are relevant excerpts from the transcript of the deposition of 30(b)(6) City of Seattle, dated April 28, 2022.

I declare under penalty of perjury, under the laws of the State of Washington that the foregoing is true and correct to the best of my ability and knowledge

DATED this 17<sup>th</sup> day of August, 2022.

OLES MORRISON RINKER & BAKER LLP

By: s/Nicole E. Wolfe  
Nicole E. Wolfe, WSBA 45752  
Jason R. Wandler, WSBA 27363  
701 Pike Street, Suite 1700  
Seattle, WA 98101  
Telephone: (206) 623-3427  
Facsimile: (206) 682-6234

*Attorneys for Appellant Newway Forming Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certified under penalty of perjury under the laws of the state of Washington that on this 17<sup>th</sup> day of August, 2022, I caused true and correct copies of the foregoing document, to be delivered to the following parties and in the manner indicated below:

Office of the Hearing Examiner The Hon. Ryan Vancil, Hearing Examiner 700 Fifth Avenue, Suite 4000 Seattle, WA 98104	<input checked="" type="checkbox"/> E-File <input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: <a href="mailto:Hearing.Examiner@seattle.gov">Hearing.Examiner@seattle.gov</a>
Mark D. Kimball Alex T. Larkin MDK Law 777 108 <sup>th</sup> Ave. NE, Suite 2000 Bellevue, WA 98004  <i>Attorneys for Baja Concrete USA Corp.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:mark@mdklaw.com">mark@mdklaw.com</a> <a href="mailto:alarkin@mdklaw.com">alarkin@mdklaw.com</a>
Ann Davison, Seattle City Attorney  Lorna S. Sylvester, WSBA #29146 Erica R. Franklin, WSBA #43477 Assistant City Attorneys 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7095 Phone: (206) 684-8200  <i>Attorneys for Respondents, The City of Seattle and the Seattle Office of Labor Standards</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:Lorna.Sylvester@seattle.gov">Lorna.Sylvester@seattle.gov</a> <a href="mailto:erica.franklin@seattle.gov">erica.franklin@seattle.gov</a> <a href="mailto:sheala.anderson@seattle.gov">sheala.anderson@seattle.gov</a> <a href="mailto:Susannah.hanley@seattle.gov">Susannah.hanley@seattle.gov</a>
Aaron Rocke Sara Kincaid Rocke Law Group, PLLC 500 Union Street, Suite 909 Seattle, WA 98101  <i>Attorneys for Appellant, Antonio Machado</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery/Legal Messenger <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: <a href="mailto:aaron@rockelaw.com">aaron@rockelaw.com</a> <a href="mailto:sara@rockelaw.com">sara@rockelaw.com</a> <a href="mailto:service@rockelaw.com">service@rockelaw.com</a>

SIGNED at Seattle, Washington this 17<sup>th</sup> day of August, 2022.

*s/Catherine A. Trimbour*  
Catherine A. Trimbour

# **EXHIBIT 1**

**BAJA CONCRETE USA CORP**  
**Employee Details**

Employee Name	Position	Address	Work Location	Rate Pay	Hired
Jose Acosta Caballero	WC Class & Subclass: 0217 01	6103 St Albion Way Apt 1301 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$22.50/hr	Hired: 9/1/2019
Javier A. Alfaro Perez	WC Class & Subclass: 0217 01	6103 Albion Way Apt I 306 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$20.50/hr	Hired: 01/27/2020
Miguel A. Alfaro Pinto	WC Class & Subclass: 0217 01	6103 Albion Way Apt I 306 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$29.00/hr Covid-19: \$27.50/hr	Hired: 01/27/2020
Jose R. Alvarez Rodriguez	WC Class & Subclass: 0217 01	6107 Albion Way Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$20.50/hr	Hired: 02/11/2020
Luis Andres Arriagada Aguilera	WC Class & Subclass: 0217 01	6301 219th ST SW Apt A103 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$26.00/hr	Hired: 09/09/2019
Julio C. Caballero Pacheco	WC Class & Subclass: 0217 01	6103 Albion Way Apt I 301 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$20.50/hr	Hired: 02/08/2020
Manuel Camus Valdes	WC Class & Subclass: 0217 01	6201 ST Albion Way Apt J 204 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$30.00/hr Covid-19: \$30.00/hr	Hired: 11/15/2018
JOSE A. ESTRADA PARRA	WC Class & Subclass: 0217 01	6103 ST ALBION WAY APT. I301 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$28.50/hr Covid-19: \$28.50/hr	Hired: 01/25/2019
Patricio A. Fernandez Borquez	WC Class & Subclass: 0217 01	6103 Albion Way Apt I306 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$30.00/hr Covid-19: \$30.00/hr	Hired: 01/02/2019
Gerardo Guzman Barragan	WC Class & Subclass: 0217 01	4714 212th ST SW Apt # 205 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$25.00/hr Covid-19: \$25.00/hr	Hired: 11/25/2019
Raul Benjamin Hiraes Cuevas	WC Class & Subclass: 0217 01	6103 ST Albion Way Apt 1301 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$22.50/hr	Hired: 09/01/2019
Roberto Hiralez Colin	WC Class & Subclass: 0217 01	18403 34nd Ave South Seattle WA 98188	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$33.00/hr Covid-19: \$32.00/hr	Hired: 11/01/2018
Roberto Lopez Hernandez	WC Class & Subclass: 0217 01	6301 219th SW Apt H208 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$20.50/hr Covid-19: \$20.50/hr	Hired: 03/01/2020

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NOE I. RIOS ESTRADA	WC Class & Subclass: 0217 01	6204 ST ALBION WAY APT. I307 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$26.00/hr Covid-19: \$26.00/hr	Hired: 01/30/2019
Gabriel Rios Ortiz	WC Class & Subclass: 0217 01	630 219th St SW Apt A103 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$28.50/hr Covid-19: \$28.50/hr	Hired: 02/20/2020
Gerardo . Valencia	WC Class & Subclass: 0217 01	16305 31nd Ave South Seattle Seattle WA 98108	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$28.50/hr Covid-19: \$28.50/hr	Hired: 11/01/2018
MARCO P. VILLASENOR HARBOLTE	WC Class & Subclass: 0217 01	6402 ST ALBION WAY APT. I308 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$22.50/hr	Hired: 04/15/2019
*Jesus Ramon Castro Mendoza	WC Class & Subclass: 0217 01	6103 St Albion Way Apt I306 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Commission Only	Hired: 09/15/2019 Term: 02/10/2020
*Hector A. Cespedes Rivera	WC Class & Subclass: 0217 01	6103 ST ALBION WAY APT. I306 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr By:DD ....4111	Hired: 11/15/2018 Term: 03/16/2020
*Luis G. Fernandez Rosas	WC Class & Subclass: 0217 01	6301 219th ST SW Apt #A103 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Commission Only	Hired: 11/14/2019 Term: 02/10/2020
*Claudio I. Gamboa	WC Class & Subclass: 0217 01	6103 St Albion Way APT I301 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Commission Only	Hired: 11/15/2018 Term: 03/16/2020
*Cristian Navejas	WC Class & Subclass: 0217 01	6103 ST ALBION WAY APT. I302 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$27.50/hr	Hired: 11/01/2018 Term: 03/15/2020
*Josue F. Osuna Tallabas	WC Class & Subclass: 0217 01	6301 219th St SW Apt A 103 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr	Hired: 11/04/2019 Term: 03/16/2020
*Diego F. Rojas Villaseca	WC Class & Subclass: 0217 01	6303 ST Albion Way Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement By:DD ....0322	Hired: 01/24/2020 Term: 02/10/2020
*David M. San Roman Mendo	WC Class & Subclass: 0217 01	6103 ST Albiot Way 1301 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 12/10/2019 Term: 03/16/2020
*Antonio Yevenes	WC Class & Subclass: 0217 01	6301 219th ST SW APT A103 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement Regular Pay: \$22.50/hr Covid-19: \$22.50/hr	Hired: 01/15/2020 Term: 05/01/2020
*Evelio Alvarez Ruiz	WC Class & Subclass: 0217 01	6103 St Albion Way apt A308 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 07/06/2019
*MIGUEL A. ARVIZU ESCAMILLA	WC Class & Subclass: 0217 01	6301 214TH ST SW APT.	6103 St. Albion Way Apt. I-306	Piece of Work - Agreement	Hired: 01/25/2019

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		MOUNTLAKE TERRACE WA	Mountlake Terrace, WA 98043		Term: 07/06/2019
*Israel Avila Gasca	WC Class & Subclass: 0217 01	6405 st Albion Way apt 405 Seattle WA 98103	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/15/2018 Term: 01/10/2020
*Lucas M. Ayala	WC Class & Subclass: 0217 01	18401 31nd Av Seatac SEATTLE WA 98108	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 02/01/2019 Term: 06/30/2019
*Martin M. Ayala Ochoa	WC Class & Subclass: 0217 01	18401 31st ave SeaTac WA 98148	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 12/01/2019
*MATIAS I. CATALAN TORO	WC Class & Subclass: 0217 01	6103 ST ALBION WAY APT. 1302 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 01/31/2019 Term: 09/07/2019
*Edison R. Chimborazo Macas	WC Class & Subclass: 0217 01	6001 219th St SW F201 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 08/06/2018 Term: 07/06/2019
*Emeterio Collins Lopez	WC Class & Subclass: 0217 01	630 219th St SW Apt 103 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 09/01/2019 Term: 12/15/2019
*Ramon A. Duenas Gomez	WC Class & Subclass: 0217 01	6205 st Albion Way apt 206 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/15/2018 Term: 01/10/2020
*Alejandro Fiol	WC Class & Subclass: 0217 01	6103 St Albion Way apt A308 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 07/06/2019
*LUIS A. GARCIA	WC Class & Subclass: 0217 01	603 ST ALBION WAY #305 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 01/25/2019 Term: 07/06/2019
*David Giron	WC Class & Subclass: 0217 01	6403 St Albion Way T405 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 07/06/2019
*ANGEL M. GOMEZ CHAVEZ	WC Class & Subclass: 0217 01	6103 ST ALBION WAY APT. I 301 MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 01/25/2019 Term: 09/07/2019
*Ruben Gonzalez	WC Class & Subclass: 0217 01	6103 St Albion Way apt A308 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 01/01/2020
*John E. Hinestroz Diaz	WC Class & Subclass: 0217 01	6103 St Albion Way apt A305 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 07/06/2019
*Cristhian Pelaez Ruiz	WC Class & Subclass: 0217 01	6506 st Albion way Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 01/10/2020
*Ivan A. Ponce	WC Class & Subclass: 0217 01	6203 st Albion Way APT. I302 Mountlake Terrace WA 98043	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 11/01/2018 Term: 11/16/2019
*JOSE R. VEGA HERNANDEZ	WC Class & Subclass: 0217 01	6002 219TH ST SW APT. MOUNTLAKE TERRACE WA	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Piece of Work - Agreement	Hired: 01/25/2019 Term: 01/10/2020

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*Bulfrano Brito	WC Class & Subclass: 0217 01	17304 32nd Ave S	6103 St. Albion Way Apt. I-306	Piece of Work - Agreement	Hired: 11/27/2017
		Sea Tac WA 98188	Mountlake Terrace, WA 98043	Regular Pay: \$15.00/hr	Term: 08/11/2018
*Alexis Hernandez	WC Class & Subclass: 0217 01	6103 St. Albion Way Apt. I-306	6103 St. Albion Way Apt. I-306	Piece of Work - Agreement	Hired: 01/28/2018
		Mountlake terrace WA 98043	Mountlake Terrace, WA 98043	Regular Pay: \$15.00/hr	Term: 02/16/2018
Claudia L. Penunuri	PRESIDENT	12736 Sw 133 ST Miami FL 33186	6103 St. Albion Way Apt. I-306 Mountlake Terrace, WA 98043	Salary: \$3,000.00/Month By:DD ....4765	Hired: 04/01/2018



# **EXHIBIT 2**

## **BAJA CONCRETE USA**

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

**Roberto**  
**Carlos**

**Cell 360.559.9400**  
**Cell 780.885.6123**

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

# **EXHIBIT 3**

Page 1

BEFORE THE HEARING EXAMINER  
OF THE CITY OF SEATTLE

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

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

9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

Page 1

BEFORE THE HEARING EXAMINER  
OF THE CITY OF SEATTLE

In the Matter of the Appeal of: )  
Baja Concrete USA Corp., Newway )  
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ZOOM DEPOSITION UPON ORAL EXAMINATION  
OF  
KWYNNE FORLER-GRANT 30(b)(6)

9:00 a.m.

May 5, 2022

REPORTED BY: Pat Lessard, CCR #2104

1 also joining these meetings?

2 A. It would typically be their super,  
3 superintendent.

4 Q. So specifically as far as Baja Concrete is  
5 concerned, are you aware, did Baja Concrete have a  
6 superintendent onsite at 1120 Denny --

7 A. Yes.

8 Q. Yes?

9 A. Yes. Sorry.

10 Q. And do you know who that was?

11 A. Roberto Soto.

12 Q. Roberto Soto Contreras?

13 A. Yes.

14 Q. I'm jumping around a little bit here so I  
15 apologize for that.

16 So you said a few minutes ago that you  
17 handled or you handle, I guess, pretty much all  
18 paperwork.

19 Does that include employment contracts?

20 A. I'm trying to think. A lot of our workers  
21 are on a T&M basis, if that makes sense, time and  
22 materials.

23 So if we had a contract with, say, Seaco, it  
24 would probably be signed above me and dealt with above  
25 me.

1 and a worker on Baja's payroll was not available for  
2 the additional hours, what would happen?

3 A. We may get behind schedule.

4 Q. And who would that worker communicate to to  
5 say that he was unavailable?

6 A. Roberto.

7 Q. And what would Roberto do with that  
8 information?

9 A. Inform the leads that there's nobody  
10 available.

11 Q. And then what would happen after that?

12 A. There would just be work for another day.

13 Q. Okay. Was the person penalized in that  
14 situation?

15 A. You would have to ask Baja. I don't know.

16 Q. Okay. So did Baja workers on the relevant  
17 worksites during the relevant time period take breaks?

18 A. That would have been controlled by Roberto.  
19 I'm not sure.

20 Q. Were breaks determined on a site-wide basis  
21 at 1120 Denny?

22 A. I believe the lunch was just as a whole.  
23 It's not ringing a bell, but because the food trucks  
24 would ring their bells pretty much on 2014.

25 I mean it's up to the subcontractors to tell

1 their people when they're going to have breaks.

2 Q. Could breaks happen at any time or were  
3 there certain times during the course of the work that  
4 it would not be appropriate for workers to take a  
5 break?

6 A. It was a pretty standard agreement when they  
7 had them. I would say like 10:30 and 2:30.

8 That was our people.

9 Q. So did Baja people take their breaks at  
10 10:30 and 2:30 as well?

11 A. I wasn't onsite. I'm not sure.

12 Q. And whose decision was it that lunch breaks  
13 could be timed for the food trucks?

14 A. The construction workers.

15 Q. What if a worker from Baja needed an extra  
16 break or a break outside of a normally scheduled one,  
17 who would he have to ask?

18 A. Roberto.

19 Q. And what would Roberto do when he got that  
20 request?

21 A. I have no idea. You'd have to ask Baja.

22 Q. Did Newway have any authority over when Baja  
23 workers could take breaks?

24 A. No.

25 Q. What was Newway's policy for Newway workers



1 who were calling out sick?

2 A. You mean we had sick leave?

3 Q. Yes.

4 A. They would let their leads know.

5 Q. Okay. And what about a Baja worker on a  
6 Newway site, what was the process?

7 A. They would ask Roberto Soto.

8 Q. And what would Roberto Soto do with that  
9 request?

10 A. I have no idea. You would have to ask him.

11 Q. If a worker from Baja was calling out sick  
12 would Newway's personnel be informed of that?

13 A. Most times, yes.

14 Q. Would they have any discretion as to whether  
15 or not the worker could call out sick?

16 A. Newway, no. No.

17 Q. How did calling out sick affect worker pay  
18 for Baja workers?

19 A. I have no idea.

20 Q. When a worker called out sick would that be  
21 reflected in the invoices that Baja sent to Newway?

22 A. No.

23 Q. Did Newway track sick leave for Baja  
24 workers?

25 A. No.

1 A. Newway, yes.

2 Q. When you say Newway, did Newway leads tell  
3 their units -- I guess did they tell subcontractors  
4 what to do?

5 A. Through their superintendents.

6 Q. Okay. Was Roberto the superintendent for  
7 Baja?

8 A. Yes.

9 Q. Let me think. Just a moment.

10 So is there anything else that Newway leads  
11 were responsible for?

12 A. Possibly just making sure people are  
13 attending the safety meetings, their employees, their  
14 staff underneath them.

15 Q. Were Newway leads responsible for ensuring  
16 that Baja workers attended the safety meeting?

17 A. It's our policy that all subcontractors come  
18 to the meetings but that would still be instructed  
19 through Roberto.

20 Q. Was there an instruction from Newway to  
21 Roberto that Baja workers needed to attend those  
22 trainings?

23 A. Yes.

24 Q. Did Newway leads supervise the day-to-day  
25 work of their units?

1 respect to the payment of invoices to Baja during the  
2 relevant time period?

3 A. With check stubs.

4 Q. Anything else?

5 A. We have a software program called Adagio.  
6 They would all be entered into there.

7 Q. Okay. And does Newway retain those records?

8 A. Yes.

9 Q. Any other records associated with payment of  
10 invoices that Newway would generate?

11 A. No.

12 Q. How were Baja workers on the relevant  
13 worksites hired?

14 A. I have no idea.

15 Q. Did Newway have any input into the hiring  
16 process?

17 A. No.

18 Q. Did Roberto keep Newway apprised of the  
19 hiring process?

20 A. No.

21 Q. And did Newway tell Roberto how many workers  
22 it needed?

23 A. No.

24 Q. So you said that -- let me make sure I  
25 understand your prior testimony.

1           A.    If it was noticed -- any subcontractor, if  
2   it's noted that somebody doesn't have the skillset  
3   then it would be reported to their supervisor, super.  
4   In this case Roberto Soto.

5           Q.    Okay.  Were Baja workers on the relevant  
6   worksites ever fired during the relevant time period?

7           A.    I wouldn't know that.  You'd have to ask  
8   Baja.

9           Q.    Did Newway play any role in firing workers?

10          A.    For Baja?

11          Q.    Yes.

12          A.    No.

13          Q.    But Newway might notice that a worker did  
14   not have the right qualifications and inform the  
15   subcontractor's lead person, right?

16          A.    Right.  But they didn't directly hire or  
17   fire anybody.  A lot of times if we get a carpenter  
18   that doesn't have the skillset they are moved to labor  
19   because the union took them in improperly.  They  
20   weren't the level that they should have been.

21                I don't know what Baja did with somebody  
22   that the foreman said that they didn't have the  
23   skillset.  I'm not sure.

24          Q.    I'm going to ask you generally about all  
25   workers.  How were workers on the relevant worksites

1     disciplined?

2           A.     Two writeups, on a third, termination.

3           Q.     And what about Baja workers, was that the  
4     same process?

5           A.     We didn't have any control over their  
6     workers for hiring or firing.

7           Q.     If a Baja worker needed a writeup, would  
8     someone from Newway communicate that to Roberto?

9           A.     I suppose so. It would be Roberto.

10          Q.     If Roberto fired a worker would Newway be  
11     notified?

12          A.     No.

13          Q.     What about -- I'm sorry, I didn't mean to  
14     talk over you. Go ahead and finish.

15          A.     No, go ahead.

16          Q.     If Roberto disciplined a worker would anyone  
17     at Newway be notified?

18          A.     No.

19          Q.     Okay. So now I want to step back a little  
20     bit and ask you about the work that was being done on  
21     this worksite. And again you're going to have to  
22     excuse me because I don't know much about construction  
23     work.

24                    So what was Newway brought on to the  
25     relevant worksites to do?

1 I'll do it on a piece-by-piece basis.

2 A. Okay.

3 Q. You talked about the early morning meetings  
4 where tasks are assigned.

5 What's the basis for the assignment of those  
6 tasks? In other words, who comes up with what tasks  
7 need to be done and where does that come from?

8 A. The scope of work.

9 Q. Where is that defined?

10 A. It's defined by a schedule.

11 Q. Who creates the schedule?

12 A. Onni.

13 Q. Onni. And Onni is the general contractor?

14 A. Yes.

15 Q. So if I understand correctly, every day Onni  
16 prepares the schedule and you guys know what you're  
17 supposed to do, you have a meeting.

18 What's discussed at the meeting?

19 A. Each individual subcontractor's scope of  
20 work.

21 Q. Okay. Is it the subcontractor's  
22 responsibility to determine how they perform that  
23 scope of work?

24 A. Yes.

25 Q. Is it their responsibility to determine how

1 many people they need to complete that scope of work?

2 A. Yes.

3 Q. Does Newway have any say in the means and  
4 methods and the labor that goes into a subcontractor's  
5 performance of their scope of work?

6 A. No.

7 MR. WANDLER: That's all I have.

8 MR. LARKIN: I have a few follow-up  
9 questions if this is my time.

10 E X A M I N A T I O N

11 BY MR. LARKIN:

12 Q. You testified, if I got it right this  
13 morning, that it was about a year and a half into the  
14 relevant time period when you spotted, I think you  
15 said, what appeared to be maybe three irregularities,  
16 correct?

17 A. Yes.

18 Q. That was "Yes" for the record. I'm not sure  
19 if that was clear.

20 So a year and a half in. So by that time  
21 there had been a whole lot of daily labor provided by  
22 Baja to Newway, correct?

23 A. Yes.

24 Q. And prior to the time clock, so during that  
25 first year and a half portion of the relevant time

1 S I G N A T U R E

2 I declare under penalty of perjury under the  
3 laws of the State of Washington that I have read my within  
4 deposition, and the same is true and accurate, save and  
5 except for changes and/or corrections, if any, as indicated  
6 by me on the CHANGE SHEET flyleaf page hereof.

7 Signed in \_\_\_\_\_, Washington,  
8 this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

9

10

11 -----

12 KWYNNE GRANT

13 Taken: May 5, 2022

14

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22 Re: Appeal of Baja Concrete  
Cause No.: LS-21-002, 003, 004  
23 Pat Lessard, CCR 2104

24

25



## C E R T I F I C A T E

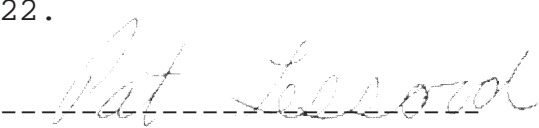
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of KWYNNE GRANT was taken stenographically by me on May 5, 2022 and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor am I financially interested in its outcome.

I further certify that in accordance with CR 30(e) the witness was given the opportunity to examine, read and sign the deposition within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
12th day of May, 2022.

  
Pat Lessard,  
pat@court-reporter.com



# **EXHIBIT 4**



## ONE-WEEK TRANSCRIPT TURNAROUND

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In the Matter of:

In the Matter of Appeal: Baja Concrete USA Corp., et al

VS

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**MERCEDES DE ARMAS**

*May 11, 2022*

---

Thank you for choosing BA Litigation Services for your court reporting, legal video, and deposition technology needs. It is always our goal to provide you with exceptional service. If there is anything we can do to assist you, please don't hesitate to let us know.

**Sarah Fitzgibbon, CCR**  
Vice President



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BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

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

VIDEOCONFERENCE DEPOSITION OF MERCEDES Z. DE ARMAS

May 11, 2022

Taken Remotely via Zoom

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

1 Valencia, currently on Page 42.

2 Is there an employer listed there?

3 **A I'm sorry. Could you repeat that question?**

4 **Q If we're looking at Exhibit No. 5, the pay stub for**

5 **Gerardo Valencia.**

6 **A The one that I see I can see right now. You are**

7 **talking about this one?**

8 **Q Yes. It's up right now.**

9 **A Okay.**

10 **Q It's on Page 42.**

11 **A Okay.**

12 **Q Do you see that?**

13 **A Yes, I do.**

14 **Q I believe the pay date is May 8th?**

15 **A 2020.**

16 **Q 2020. I'm sorry. Yes. 2020.**

17 **A Yes.**

18 **Q Is there an employer listed there?**

19 **A Yeah. It's Baja Concrete USA.**

20 **Q It doesn't say Roberto Contreras, does it?**

21 **A Correct, it doesn't say Roberto Contreras.**

22 MS. SYLVESTER: Okay. All right.

23 So it is now 12:08, and I have quite a few more

24 questions. So do we want to take a lunch break or how

25 would everybody --

C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing deposition of Mercedes Z. De Armas was taken before me and completed on May 11, 2022, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Attorney Loran Staten Sylvester.

IN WITNESS WHEREOF, I have hereunto set my signature on the 18th day of May, 2022.

*Michelle D. Elam*

Michelle D. Elam, RPR, CCR  
Certified Court Reporter 3335

B&A Litigation Services  
2208 North 30th Street, Suite 202  
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Date: May 18, 2022

To: Alex Larkin  
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Case: In the Matter of the Appeal of: Baja Concrete  
USA Corp., Roberto Contreras, Newway Forming  
Inc., and Antonio Machado

Witness: Mercedes Z. De Armas  
Cause No.: LS-21-002, LS-21-003, LS-21-004  
Date Taken: May 11, 2022

The above transcript must be read and the  
Correction Sheet signed within 30 days of this notice or  
before the trial date. If the Correction Sheet is not  
signed within that time period, signature will be deemed  
waived for all purposes.

Please contact the witness and arrange a  
convenient time and place for reading and signing.

After the Correction Sheet is signed, please mail  
the signed original Correction Sheet to:

Lorna Staten Sylvester  
Seattle City Attorney's Office  
701 5th Avenue  
Suite 2050  
Seattle, Washington 98104

Michelle D. Elam, RPR, CCR 3335

Cc:

# **EXHIBIT 5**



## CITY OF SEATTLE

*schedule@balitigation.com*

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Also present: Claudia Penunuri

1     **A     Yes.**

2     Q     And are you prepared today to testify on each of these  
3            topics?

4     **A     Yes, I am.**

5     Q     Thank you.

6            And now I would like to talk a little bit about  
7            what you did to prepare for today's deposition.

8            How long did you spend preparing for today's  
9            deposition? And at this point I'm just talking about  
10          the 30(b)(6) deposition that we're doing right now.

11    **A     How long?**

12    Q     Yeah, approximately.

13    **A     Well, it's probably 10, 15 minutes.**

14    Q     10 or 15 hours?

15    **A     No, minutes.**

16    Q     Oh, okay. You spent 10 to 15 minutes preparing for  
17          today's deposition?

18    **A     Yes, I did. I mean, it has been going on forever.**

19          You're talking about reading this document, I spent on  
20          this document 10, 15 minutes.

21    Q     Okay. I understand.

22          Did you do anything else besides reading this  
23          document to prepare for today's deposition?

24    **A     No.**

25    Q     And without telling me anything about the contents of

1     **A**     Well, that Exhibit A, I have it here. And the  
2             Exhibit A also came with something else, like says  
3             Mercedes De Armas. I think there are two of them.

4     **Q**     Are you referring to a subpoena or a --

5     **A**     The subpoena, that's correct.

6     **Q**     Okay. Thank you.

7             Can you please describe your relationship to Baja  
8             Concrete?

9     **A**     My relationship with Baja Concrete? A hundred percent  
10            right now Baja Concrete; right?

11    **Q**     I was just hoping you could describe what your role is  
12            with respect to Baja Concrete.

13    **A**     So this is not a question for Baja Concrete but a  
14            question for who? For Mercedes?

15    **Q**     Yes, this is a question for you.

16    **A**     Okay. Mercedes De Armas has no relationship  
17            whatsoever with Baja Concrete.

18    **Q**     Okay.

19    **A**     But Mercedes Accounting & Associate and as the CEO of  
20            Mercedes Accounting, yes, I was hired by them to  
21            process payroll and do some kind of -- do some  
22            accounting for them.

23    **Q**     When did that -- I'm actually going to talk more about  
24            that relationship later in the deposition. So let's  
25            actually move on right now. So thank you.

1 believe that's why Roberto has summaries.

2 Q Okay. Did Baja deduct any amounts from workers  
3 paychecks?

4 A I'm sorry. Could you repeat the question?

5 Q Yes.

6 Did Baja deduct anything from the payment it made  
7 to workers?

8 A Yes, there was an agreement with the workers. Some of  
9 them will facilitate an apartment, place to live at  
10 the beginning. And it was for free the first month.  
11 And then they agreed that that will be taken off their  
12 paycheck.

13 Q Okay.

14 A Because they wanted to see -- the workers said, "We  
15 want to see that we are paying the rent. So give us  
16 something on the paycheck," and they wanted to see it  
17 on the paycheck. But it was, like, a loan, more,  
18 like, giving them, whatever.

19 Q Okay. Let's --

20 A Baja really treated its workers really well. Gave  
21 them -- I mean -- I'm telling you, Baja Concrete  
22 really did the extra mile for the workers, to keep  
23 them happy and make sure that they were there and  
24 working. They did everything they could.

25 Q Thank you.

Roberto said that he was -- he was taking from Newway, but Newway would not give to him. I understand that is the property of Newway Forming. So they were taking this summary from those time cards.

So actually, we didn't need it. We didn't need it. Why we needed the time cards for Newway Forming? We needed the amounts, and we trust the amounts were right, and they were to the payroll processing.

MS. FRANKLIN: Okay. Now let's turn to another exhibit. This one was originally marked A.

And, Ms. Elam, are we on Exhibit 4?

THE COURT REPORTER: Yes.

MS. FRANKLIN: So let's mark this as Exhibit 4, please.

(Exhibit No. 4 marked for identification.)

MS. FRANKLIN: And, Ed, could you just scroll through so the witness can see the full document, please.

Q (By Ms. Franklin) Okay. Ms. De Armas, do you recognize this document?

A Oh, yeah, those pay stubs. Yeah, I've seen this document.

Q Okay. Who generated this document?

A That is Mercedes Accounting, the payroll processor.

1           **Those are the pay stubs.**

2       Q       And were they paid from Baja Concrete's payroll?

3       A       **Yeah, Baja Concrete's payroll.**

4       Q       And was Mercedes Accounting working on behalf of Baja  
5           in producing these pay stubs?

6       A       **No. Mercedes Accounting is not working on behalf of  
7           Baja. Maybe I don't understand the question.**

8                   **This is Baja Concrete reporting the hours and  
9           Mercedes Accounting is processing the payroll for them  
10          and giving the pay stubs to them, according to the  
11          summary hours that Roberto reported.**

12                               MS. FRANKLIN: Okay. Let's look at  
13          the second page of this PDF, if we could, please. I  
14          know it's kind of hard to see. Actually, let's scroll  
15          down just to -- there we go.

16       Q       (By Ms. Franklin) So was this employee paid on an  
17          hourly basis?

18       A       **No, not really. Well, it's hard to tell because --  
19          could you show the net pay at the bottom?**

20                               MS. FRANKLIN: Can you scroll down a  
21          bit? Oh, is it up above where it says "Net Pay"?

22                               THE WITNESS: Yeah. Yeah. This  
23          is -- this is -- if I see this -- could you go to the  
24          first page or a little bit up. It doesn't matter  
25          which one, or you want to see a particular one?

MS. FRANKLIN: I'm talking about Baja, I'm talking about the US -- Baja Concrete USA.

Q (By Ms. Franklin) So when did individuals who were -- people who were working for Newway first come into contact with people who were working for Baja Concrete USA?

A Okay. You have to repeat that. Sometimes I cannot hear well, what you are saying.

Q Oh, sure. Sorry. It can be hard over Zoom.

A Yeah.

Q When did people who were working for Newway first come into contact with people who worked for Baja Concrete USA?

A I don't know any of that. Roberto would know.

Q Why would Roberto know?

A Remember, this is an agreement coming from Canada, and they made the agreement there. And, you know, everything comes to him in the USA. So Roberto is part of the agreement -- a partner there -- I don't know exactly why he's in Canada. So it was set up there.

Q When did the companies Newway Forming and Baja Concrete USA first interact with one another?

A I don't know.

Q Are you prepared today to testify about the origins of



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 he would resolve them all. Baja Concrete will have  
2 nothing to do with that.

3 Q Was Baja Concrete USA Corp. benefiting from Roberto's  
4 work?

5 A No. Baja Concrete USA pay Baja Concrete Ltd.

6 Now, you need to separate. Roberto works for the  
7 Canadian company, and Roberto there is assigning his  
8 agreement, his partnership, whatever it is, which I  
9 don't know, he was hired to -- to hire the workers,  
10 you know, to deal with everything like that. That's  
11 why he was completely independent because he will do  
12 that -- everything. That was coming from Baja  
13 Concrete Ltd. So ...

14 Q But the workers that he was performing these tasks for  
15 were on Baja Concrete USA Corp.'s payroll; correct?

16 A The workers that he hired and did the whole thing,  
17 they were all processed by Baja Concrete USA payroll,  
18 yeah. He will report a summary of everything.

19 Q Okay.

20 A And I mean everything.

21 Q I want to go back to a question I'm not really sure  
22 you answered before.

23 You said that the amount that Baja Concrete Ltd.  
24 billed Baja Concrete USA Corp. for Roberto, you said  
25 that amount varies. So I want to understand why it

1     **A     Baja didn't do anything. Baja processed the payroll.**

2     Q     So Baja just processed the payroll? That was the only  
3           role at the Denny Way project?

4     **A     Yeah, processed the payroll that Roberto was**  
5           **reporting.**

6     Q     And nothing else?

7     **A     And nothing else.**

8     Q     And so generally speaking, what was Roberto Soto  
9           Contreras's role then?

10    **A     What was Roberto Soto's role?**

11    Q     Yes.

12    **A     Well, hiring, supervising, firing, discipline, review**  
13           **everything, assigning together with Newway Forming.**  
14           **Together, I guess they will do something there.**

15                 I wasn't on the sites, but I know that's what he  
16           was doing because he's the one who was hiring the

17           **people, firing the people. You know, he's the one**

18           **doing that together with Newway Forming. They were on**

19           **the site. It's labor.**

20    Q     So did Baja Concrete ever go on the site?

21    **A     No, Baja Concrete never went on the site.**

22                         MS. WOLFE: All right. That's all  
23           of the questions I have. Thank you.

24           ///

25           ///

1           ago?

2       **A     Probably because all I have is the payroll. So all of**  
3       **this is coming from payroll.**

4       Q     And then going down to Question No. 2, it says,  
5           "Provide names, titles, and addresses of your  
6           corporate office, corporate officers, and owners and  
7           percentages of ownership for each location."

8                 Can you tell me what your answer was to this  
9           question?

10      **A     It's Claudia Penunuri, president, a hundred percent.**  
11      **Yes, and she is.**

12      Q     And he is the president of Baja USA?

13      **A     Yes.**

14      Q     And going down to Question 3, it says, "Describe the  
15           process by which you publicized job openings, solicit  
16           job applicants, and hire new employees. Include the  
17           names and titles of individuals with authority to make  
18           decisions in this process."

19                 Do you see that question?

20      **A     Yes.**

21      Q     And are you able to read me your response to that  
22           question?

23      **A     It says, "Applicants go to the jobsite to request**  
24      **employment." Some of them do. "Roberto Soto,**  
25      **independent contractor select candidates and make**

1           **decisions with president of company."**

2           Q       And in reference to "president of company," who were  
3           you referring to there?

4           A       **Claudia.**

5           Q       And so you said, "select candidates and makes  
6           decisions with president of company," what did you  
7           mean by that?

8           A       **Well, Roberto would do the whole thing and he will let**  
9           **Claudia know everybody that -- Claudia will never**  
10          **complain -- will never say anything.**

11          Q       Well, I'm not asking if Claudia complained.  
12                  I'm simply asking what kind of decisions did he  
13          make with Claudia?

14          A       **He was letting Claudia know of what he was doing and**  
15          **pending. It was a communication with Claudia.**

16          Q       And so he --

17          A       **With --**

18          Q       I'm sorry.

19          A       **(Inaudible.)**

20          Q       I didn't catch that last thing you said. Could you  
21          repeat that?

22          A       **I said Claudia and Carlos. But remember, this is a**  
23          **document for USA. So I'm focusing on USA, yeah. He**  
24          **would let Claudia know the situation and the hiring he**  
25          **was doing and everything.**

1 would still have possession of?

2 **A Yes, we will have them.**

3 Q I think you alluded to this earlier, but I just wanted  
4 to clarify.

5 Was Baja USA paying for taxes to the government  
6 on these workers?

7 **A Okay. Let me see if I understand your question.**

8 You are saying that Baja Concrete USA was paying  
9 taxes to the government?

10 Q On behalf of these workers. So I'm asking you if they  
11 did.

12 **A Okay. You are talking about payroll taxes.**

13 **Yes. Every single penny was paid in full.**

14 Q Okay. And did Baja Canada pay any money to Baja USA  
15 regarding these workers and payroll?

16 **A No. It was just for the -- Roberto Contreras and**  
17 **that. And I don't know if it was another service, but**  
18 **no. Baja Concrete USA was paying everything for the**  
19 **workers.**

20 Q Okay. And you testified that Baja USA hired Mercedes  
21 Accounting to do payroll and accounting for them; is  
22 that correct?

23 **A That is correct.**

24 Q So if I understand it correctly -- let me rephrase the  
25 question.

1                    So if Baja's USA role was to provide labor, how  
2                    did Baja USA do that?

3        A        Roberto Contreras, right, was looking for the labor,  
4                    recruiting the labor, interviewing the labor, got them  
5                    together. Roberto Contreras did all of that.

6        Q        Okay. So if Roberto Contreras was dealing with all of  
7                    the labor and Mercedes Accounting was doing payroll  
8                    and accounting, what was Baja USA's role in all of  
9                    this?

10       A       Well, obviously, Baja Concrete USA is the one in  
11                    charge here; right? They needed to make sure every --  
12                    the payroll was done, the taxes were paid. All kinds  
13                    of thing. All the bookkeeping was done. That's why  
14                    they hire us. Claudia was overseeing, you know, the  
15                    stuff but --

16       Q        So what was Claudia's oversight? What did that  
17                    involve?

18       A        She will call me, we will have meetings regarding how  
19                    thing were going, you know. Every, you know -- she  
20                    will receive reports, you know. So she knows.

21                    She was mainly focusing in the receivables. But  
22                    we were not doing receivables. The only thing was out  
23                    of the contract. I don't do receivables for any  
24                    client. So the receivables is done by Baja Concrete  
25                    directly. And that's why you see those invoices

C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing deposition of Mercedes Z. De Armas was taken before me and completed on April 26, 2022, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Attorney Erica Franklin.

IN WITNESS WHEREOF, I have hereunto set my signature on the 3rd day of May, 2022.

*Michelle D. Elam*

Michelle D. Elam, RPR, CCR  
Certified Court Reporter 3335



B&A Litigation Services  
2208 North 30th Street, Suite 202  
Tacoma, Washington 98403  
253.627.6401

Date: May 3, 2022

To: Alex Larkin  
MDK Law  
777 108th Avenue NE  
Suite 2000  
Bellevue, Washington 98004

Case: In the Matter of the Appeal of: Baja Concrete  
USA Corp., Roberto Contreras, Newway Forming  
Inc., and Antonio Machado

Witness: Mercedes Z. De Armas

Cause No.: LS-21-002, LS-21-003, LS-21-004

Date Taken: April 26, 2022

The above transcript must be read and the  
Correction Sheet signed within 30 days of this notice or  
before the trial date. If the Correction Sheet is not  
signed within that time period, signature will be deemed  
waived for all purposes.

Please contact the witness and arrange a  
convenient time and place for reading and signing.

After the Correction Sheet is signed, please mail  
the signed original Correction Sheet to:

Erica Franklin  
Seattle City Attorney's Office  
701 5th Avenue  
Suite 2050  
Seattle, Washington 98104

Michelle D. Elam, RPR, CCR 3335

Cc:

# **EXHIBIT 6**

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

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

9:00 a.m.

April 28, 2022

REPORTED BY: Pat Lessard, CCR #2104

1 A P P E A R A N C E S

2

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1 conclusion.

2 A. Can you repeat that question again? Sorry.

3 Q. (By Mr. Larkin) Based on the testimony you  
4 provided this morning so far I understand, and from  
5 what we've seen in this document, you believe that  
6 Baja Concrete paid the workers, correct?

7 A. Yes.

8 Q. And OLS also is of the view that Baja  
9 Concrete provided cement finishers, cement-related  
10 labor to Newway Forming, correct?

11 A. That's correct.

12 Q. Did Baja Concrete do anything else in  
13 addition to those things that would indicate that they  
14 were a joint employer in this case?

15 MS. FRANKLIN: Objection; calls for a legal  
16 conclusion.

17 A. Yes.

18 Q. (By Mr. Larkin) And what else did Baja  
19 Concrete do?

20 A. They would hire individuals. They set up  
21 their housing. They had people in apartments. They  
22 processed their tax documents. They did a few other  
23 things.

24 Q. So all those things that you just identified  
25 as things that Baja did, the reason OLS believes that

1 pay rates for the workers?

2 A. Yes, that's what I'm saying.

3 Q. Do you know whether Baja recruited, hired  
4 and, let's say, terminated workers?

5 A. To my understanding, yes.

6 Q. On behalf of OLS would you say that the  
7 workers performed work for the benefit of Baja?

8 A. I think Baja and Newway.

9 Q. Do you know whether there was any Baja  
10 equipment related to this cement work or other work --  
11 was there any Baja equipment located at the project  
12 sites?

13 A. Not to my knowledge.

14 Q. Do you know whether or not the workers or  
15 any of them performed work duties at the premises of  
16 Baja rather than the project sites?

17 A. I don't think Baja really had a premises,  
18 so.

19 Q. Do you know whether the workers provided  
20 specialty skills which were essential to Baja?

21 A. I guess you could say that, yes.

22 Q. Could you also say the workers provided  
23 specialty skills that were essential to Newway  
24 Forming?

25 A. Yes, I guess you could say that as well,

1 S I G N A T U R E

2 I declare under penalty of perjury under the  
3 laws of the State of Washington that I have read my within  
4 deposition, and the same is true and accurate, save and  
5 except for changes and/or corrections, if any, as indicated  
6 by me on the CHANGE SHEET flyleaf page hereof.

7 Signed in \_\_\_\_\_, Washington,  
8 this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

9

10

11 -----

12 DARON WILLIAMS

13 Taken: April 28, 2022

14

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22 Re: Appeal of Baja Concrete  
Cause No.: LS-21-002, 003, 004  
23 Pat Lessard, CCR 2104

24

25



## C E R T I F I C A T E

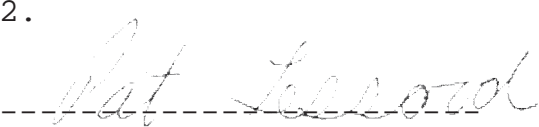
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of DARON WILLIAMS was taken stenographically by me on April 28, 2022, and transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor relative or employee of any of the parties to the action or any attorney or counsel employed by the parties hereto, nor am I financially interested in its outcome.

I further certify that in accordance with CR 30(e) the witness was given the opportunity to examine, read and sign the deposition within 30 days upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
4th day of May, 2022.

  
-----  
Pat Lessard,  
pat@court-reporter.com

