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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 CITY OF SEATTLE'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 relevant excerpts from the transcript of the 30(b)(6) deposition of Newway Forming Inc., dated May 5, 2022.
4. Attached hereto as **Exhibit 2**, are relevant excerpts from the transcript of the deposition of 30(b)(6) City of Seattle, dated April 28, 2022.
5. Attached hereto as **Exhibit 3**, are relevant excerpts from the transcript of the deposition of Antonio Machado, dated February 1, 2022.

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6. Attached hereto as **Exhibit 4**, are relevant excerpts from the transcript of the deposition of 30(b)(6) Baja Concrete USA Corp., dated April 26, 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**

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)

May 5, 2022

SEATTLE DEPOSITION REPORTERS, LLC

BEFORE THE HEARING EXAMINER  
OF THE CITY OF SEATTLE

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

May 5, 2022

SEATTLE DEPOSITION REPORTERS, LLC

1 needed to work on a given day?

2 A. That would be up to their superintendent  
3 and our lead, I guess. I don't know.

4 Q. But was it always a Newway employee who  
5 determined how many hours the workers on the relevant  
6 worksites worked?

7 A. No.

8 Q. Can you elaborate on that?

9 A. That would be Roberto Soto.

10 Q. How did Roberto Soto determine how many  
11 hours workers needed to work on a given day?

12 A. It was my understanding that it was eight  
13 hours every day. And then if there was a concrete  
14 pour late then Roberto would tell his people that they  
15 need to stay, his employees.

16 Q. How would Roberto know that there was a  
17 circumstance requiring additional hours on a given  
18 day?

19 A. A lead would tell him. It was voluntary.

20 Q. Would the lead instruct Roberto to offer his  
21 workers additional hours on such a day?

22 A. Would you say that again?

23 Q. Would the lead instruct Roberto to offer  
24 additional hours to workers on a day where there was  
25 something more to be done?

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 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 Q. Okay. Now let's talk about the other  
2 worksites.

3 So for the 707 Terry, was Newway's role the  
4 same in its contract there?

5 A. Yes.

6 Q. And was Baja's role the same?

7 A. They were only brought on for one week, but  
8 yeah.

9 Q. And what were they brought on to do in that  
10 one week?

11 A. I believe labor, which would be setting up  
12 the forms to pour the concrete in.

13 Q. Okay. Is that something that needed to  
14 happen in order for Newway to complete its tasks at  
15 707 Terry?

16 A. Yes, but we can hire out of the union. We  
17 can hire PeopleReady. It wasn't imperative that we  
18 have Baja.

19 Q. Okay. And what about 2014 Fairview Avenue,  
20 was Newway's contractual task the same?

21 A. Yes.

22 Q. And what about Baja's?

23 A. Yes.

24 Q. How did it come to be that Baja workers were  
25 dispatched to 707 Terry?

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.

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12 KWYNNE GRANT

13 Taken: May 5, 2022

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

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

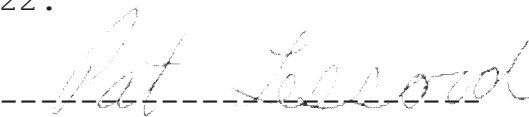
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

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 2**

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

3 FOR BAJA CONCRETE USA CORP:

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7 Bellevue, WA 98004

8 425.455.9610

9 alarkin@mdklaw.com

10

11 FOR CITY OF SEATTLE OFFICE OF LABOR STANDARDS:

12 MS. ERICA FRANKLIN

13 MS. LORNA SYLVESTER

14 Seattle City Attorney

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16 Seattle, WA 98104

17 erica.franklin@seattle.gov

18

19 FOR NEWWAY FORMING, INC:

20 MS. NICOLE WOLFE

21 Oles Morrison Rinker & Baker

22 701 Pike Street, Suite 1700

23 Seattle, WA 98101

24 wolfe@oles.com

25

A P P E A R A N C E S

FOR ANTONIO MACHADO:

MS. SARA KINCAID

Rocke Law Group

500 Union Street, Suite 909

Seattle, WA 98101-4052

206.652.8670

sara@rockelaw.com

1 introduce are the various witness statements.

2 A. Okay.

3 MR. LARKIN: I don't know if anyone would  
4 like to take a short break before we shift gears into  
5 that section of the deposition.

6 MS. FRANKLIN: I'll defer to the witness.

7 THE WITNESS: If we could take a five-minute  
8 break.

9 MR. LARKIN: Let's take five minutes, so  
10 we'll come back about 10:50.

11 THE WITNESS: That works.

12 (Recess.)

13 Q. (By Mr. Larkin) So Mr. Williams, speaking  
14 on behalf of OLS, is it OLS's position that Baja  
15 controlled the activities of the workers at issue in  
16 this investigation?

17 A. Can you define activity?

18 Q. The work activities onsite at the various  
19 project sites.

20 A. Maybe at some point a little.

21 Q. At some point a little. But mostly it was  
22 other parties that directed their activities?

23 A. Yes, from our uncovering stuff it was mainly  
24 Newway.

25 Q. Do you know whether Baja set the wages, the

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.

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12 DARON WILLIAMS

13 Taken: April 28, 2022

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

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## 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  
4th day of May, 2022.

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



# **EXHIBIT 3**

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

A P P E A R A N C E S

For Respondent City of Seattle:

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For Appellant Baja Concrete:

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For Appellant Antonio Machado:

SARA KINCAID  
ROCKE LAW GROUP, PLLC  
101 Yesler Way, Suite 603  
Seattle, WA 98104  
sara@rockelaw.com

Also Present: CLAUDIA PENUNURI

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?

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,

A F F I D A V I T

I, ANTONIO MACHADO, hereby declare under penalty of perjury that I have read the foregoing deposition and that the testimony contained herein is a true and correct transcript of my testimony, noting the corrections attached.

---

ANTONIO MACHADO

Date: \_\_\_\_\_



[illegible]

That as a matter of firm policy, the stenographic notes of this transcript will be destroyed three years from the date appearing on this transcript, unless notice is received otherwise from any party or counsel on or before said date.

Jamie Booker, RPR, CCR  
State of Washington CCR #3281  
My CCR certification expires on 10/20/2022

To: SARA KINCAID  
ROCKE LAW GROUP, PLLC  
101 Yesler Way, Suite 603  
Seattle, WA 98104  
sara@rockelaw.com

Case Name: In the Appeal of Baja Concrete Corp, et al  
Deposition of: Antonio Machado  
Date Taken: 2/1/2022  
Cause No.: LS-21-002, LS-21-003, LS-21-004  
Court Reporter: Jamie Booker, RPR, CCR

This letter is to advise you of the following:

\_\_\_\_ Signature was reserved. The affidavit and correction sheet are being forwarded to you in electronic form. Please have the deponent review the transcript, note any corrections on the correction sheet, and return the signed affidavit and correction sheet to us within 30 days of this notice. According to Court Rule 30(e), the deposition affidavit should be signed within thirty (30) days or signature is considered waived.

\_\_\_\_ Signature was reserved. The transcript is ready for review and signature. Your office did not order a copy of the deposition transcript. Please contact our office to make an appointment for review. Signature must be completed within 30 days of this notice.

(Sent without signature to avoid delay)

\_\_\_\_\_  
Jamie Booker, RPR, CCR

# **EXHIBIT 4**

## CITY OF SEATTLE

***schedule@balitigation.com***

APPEARANCES

For Appellant Baja Concrete (via Zoom):

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For Respondents, City of Seattle and The Seattle Office of  
Labor Standard (via Zoom):

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Seattle City Attorney's Office  
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Suite 2050  
Seattle, Washington 98104  
206.733.9309  
erica.franklin@seattle.gov  
Lorna.sylvester@seattle.gov

Also present: Claudia Penunuri

1 Q Was Baja incorporated in order to provide labor to  
2 Newway?

3 A Could you please repeat?

4 Q Was the purpose of Baja's formation as a company so  
5 that it could provide labor to Newway?

6 A That was, like, the first contract for the company,  
7 but I believe the company wanted to do other contracts  
8 too.

9 Q Okay. Did Baja register in Washington so that it  
10 could work with Newway?

11 A Yeah, correct because that was the only -- the only  
12 project, the only agreement that was -- that existed  
13 at that time. But also the registration would happen  
14 because Baja wanted to have other projects from other  
15 companies too.

16 Q So does Baja do business with companies other than  
17 Newway?

18 A No, they never get to it.

19 Q So Newway is the only company that Baja has ever done  
20 business with is that what you're saying?

21 A Yeah. I think they required a lot of labor. They  
22 have many projects. I mean, they were big, but I  
23 think there is -- well --

24 MR. LARKIN: It's okay. You  
25 answered the question.

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: