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7 **BEFORE THE HEARING EXAMINER**
8 **CITY OF SEATTLE**

9 In the Matter of the Appeals of
10 Baja Concrete USA Corp., Newway
11 Forming Inc., and Antonio
12 Machado,
13 From a Final Order of the Director,
14 City of Seattle Office of Labor
15 Standards, Respondent.

Hearing Examiner Files:
LS-21-002, LS-21-003, LS-21-004
(consolidated)

**APPELLANT BAJA CONCRETE USA
CORP.'S RESPONSE TO PREHEARING
MOTIONS**

HER 3.17, 3.18

16 **I. INTRODUCTION**

17 COMES NOW Appellant Baja Concrete USA Corp. ("Baja Concrete"), pursuant to
18 Hearing Examiner Rules of Practice and Procedure ("HER") Section 3.17, through the
19 undersigned counsel, and submits this Response to Prehearing Motions submitted by Appellant
20 Newway Forming Inc. and Antonio Machado on June 7, 2023.
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22 **II. DISCUSSION**

- 23 1. **Appellant Machado's motion for a prehearing finding that Mr. Machado was not a**
24 **joint employer as a matter of law.** Baja Concrete opposes this motion. Evidence
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1 produced during the hearing is needed in order for the Hearing Examiner to make a
2 determination as to whether Mr. Machado was a joint employer. The Seattle Municipal
3 Code (“SMC”), sections 14.16.010, 14.19.010 and 14.20.010 define "Employer" as “any
4 individual, partnership, association, corporation, business trust, or any entity, person or
5 group of persons, or a successor thereof, that employs another person and includes any
6 such entity or person acting directly or indirectly in the interest of an employer in relation to
7 an employee”. While, the SMC does further provide that more than one entity may be the
8 employer, it does not explicitly, or impliedly, provide that an individual cannot be a joint
9 employer.

- 10 2. **Appellant Machado’s Motions to Exclude Evidence (Motions III and IV).** Except as
11 provided otherwise in Baja Concrete’s Prehearing Motions to Exclude Evidence, Baja
12 Concrete opposes Appellant Machado’s motions to exclude evidence which was not in the
13 possession of the Office of Labor Standards when it issued its determination in this matter.
14 The Hearing Examiner Rules clearly provide that exhibits and testimony may be offered by
15 parties wishing to have such exhibits and testimony (obtained through discovery and at the
16 hearing) considered by the Examiner on appeal from a Director’s order.

18 III. CONCLUSION

19 Appellant Baja Concrete hereby requests that the Hearing Examiner deny the above-referenced
20 prehearing motions.

21 Respectfully Submitted this 9th day of June, 2023.

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MDK LAW

/s/ Alex T. Larkin

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