BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of: BAJA CONCRETE USA CORP., ROBERTO 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 **APPELLANT NEWWAY FORMING, INC.'S PARTIAL OPPOSITION TO BAJA CONCRETE USA CORP'S PREHEARING MOTION TO EXCLUDE EVIDENCE**

Newway Forming Inc. ("Newway") hereby opposes Baja Concrete Corp.'s ("Baja") prehearing motion to exclude evidence regarding Appellant Newway Forming, Inc.'s exhibits nos. 14, 15, 16, and 17 – L&I Paperwork – Gomez Chavez, Parra Ponce, Gamboa Lopresti, Catalon Toro.

I. Admissibility of Evidence

Under the Hearing Examiner Rules of Practice and Procedure Rule 18(a), the hearing Examiner can admit evidence, including hearsay, so long as it is relevant, from a reliable source, and has probative value. Rule 18(g) provides that the Hearing Examiner should consider the Washington Rules of Evidence (ER) in determining the admissibility of evidence.

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ER 401 defines relevant evidence as evidence "having a tendency to make the existence of any fact…of consequence to the determination of the action more or less probable." Appellant Baja has moved for the exclusion of relevant evidence in this matter. Specifically, Baja has moved to exclude evidence of an L&I investigation into workers' claims. Baja argues that Washington Department of Labor and Industries ("L&I") complaints filed by Baja workers are irrelevant, immaterial, and unduly repetitive. Newway addresses these arguments in turn.

II. Appellant Newway Forming Inc.'s Exhibit Numbers. 14, 15, 16, 17 – Gomez Chavez, Parra Ponce, Gamboa Lopresti, and Catalon Toro's L&I Paperwork.

i. Relevance

As mentioned above, evidence is relevant if it makes a fact of consequence more or less likely. In this instance, these L&I reports bear on the issue of whether Newway was considered a "joint employer." Further, Baja claims it was not an employer of the subject workers, however, these L&I complaints provide firsthand evidence of Baja and the wage claimants' impressions of their working relationship. These complaints and employer responses give insight into the elements considered when determining whether a joint employer relationship exists between parties and whether Baja was the employer of the subject workers.

Exhibits 14, 15, 16, and 17 are the L&I complaints filed by four of the subject workers and include Baja's responses. In response to the L&I complaints, Baja provided tax information of the employees, identifying "Baja Concrete USA Corp." as the employer. Further, Baja's written response to the L&I claims contains relevant information pertaining to

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the rate of pay of the subject employees and discusses the number of hours the employee worked per day and per week. These issues are very relevant in this appeal.

ii. Materiality

This evidence is material in that it affects the Seattle Department of Labor Standards' (OLS) finding that Newway and Baja were "joint employers," an essential element of the claims made against Newway. The evidence is also material as it tends to prove that Baja was the employer of the subject workers. Baja's response to L&I's wage claim expressly states that each of the four workers who filed claims were employees of Baja. For example, Baja's response to these L&I wage claims was that "employee did not want to pay his payroll taxes." (Ex. 14 – Ex. 17). This evidence would tend to show that Baja, rather than both Baja and Newway, was the sole employer of these workers. Because Baja expressly addresses its employment relationship in this L&I wage claim, these exhibits are material in determining whether Newway was a "joint employer."

iii. Repetition

Baja claims that admitting the L&I complaints and accompanying paperwork would be "unduly repetitive." However, this can only be true if the evidence is the same or appears elsewhere. L&I and OLS operate under different sets of rules. L&I enforces federal and state law and regulations on employers and employees. On the other hand, OLS enforces City of Seattle violations on employers. These agencies differ in their approaches and the information they gather. Here, the investigation conducted by OLS was entirely different than that of L&I. L&I sought different information in its investigation than OLS. Thus, this evidence is not

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repetitive because the information Baja supplied to OLS is different than the information it supplied to L&I.

Additionally, to the extent that Baja argues that Newway or any other party's exhibits are prejudicial, weighing probative against prejudicial value has no application in bench trials or administrative hearings, unless Baja wishes to challenge the Hearing Examiner's ability to evaluate evidence as a fact finder. *Gulf States Utilities Co. v. Ecodyne Corp.*, 635 F.2d 517, 519 (5th Cir. 1981); *In re Harbert*, 85 Wn.2d 719, 729, 538 P.2d 1212, 1218 (1975).

II. Conclusion

Newway hereby respectfully requests that the Hearing Examiner find Newway's proposed exhibits admissible under Rules 18(a), Rules 18(b), Rules 18(g), and the Washington Rules of Evidence.

DATED this 9th day of June, 2023.

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CERTIFICATE OF SERVICE

The undersigned certified under penalty of perjury under the laws of the state of Washington that on this 9th day of June, 2023, I caused true and correct copies of the foregoing document to be delivered to the following parties and in the manner indicated below:

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SIGNED at Seattle, Washington this 9th day of June, 2022.

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