

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the matter the Appeal of:)	Hearing Examiner File:
)	
BAJA CONCRETE USA CORP.,)	No: LS-21-002
ROBERTO CONTRERAS, NEWWAY)	LS-21-003
FORMING INC., and ANTONIO)	LS-21-004
MACHADO)	
)	APPELLANT ANTONIO MACHADO'S
From a Final Order of the Decision issued by)	PRELIMINARY WITNESS AND EXHIBIT
the Director, Seattle Office of Labor Standards)	LIST
)	

Appellant Antonio Machado submits this Preliminary Witness and Exhibit List pursuant to the agreement made by the parties on March 21, 2023. Appellant Machado reserves the right to call any witness named by any other party in his case in chief, and to use and rely on any exhibit submitted by any other party.

I. WITNESSES

Name of Witness: Antonio Machado

Summary of Testimony:

Mr. Machado will testify regarding his role as a Newway employee, including but not limited to the job site supervision he provided to foremen on behalf of his employer, and his lack of involvement in determining the pay rates or method of payment of the Baja employees and in the preparation or payment of wages.

Expected Length of Testimony: 30 minutes

Name of Witness: Claudia Penunuri

Summary of Testimony:

Ms. Penunuri will be called to testify regarding the formation of her company, Baja Concrete USA, Baja's business model and sources and amounts of revenue, and Baja's contractual

APPELLANT MACHADO'S WITNESS
AND EXHIBIT LIST

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arrangement with Newway. Ms. Penunuri will also be called to testify regarding her decision to hire Ms. De Armas' company Mercedes Accounting to run Baja's payroll and Ms. Penunuri's involvement and oversight of Mercedes Accounting's work, as well as Ms. Penunuri's decision to authorize Mercedes De Armas to speak on behalf of her company. Ms. Penunuri will also be called to testify regarding the remuneration personally received as an employee of Baja and / or as its owner. Ms. Penunuri will also be called to testify about Roberto Contreras' role in hiring, firing, supervising, and determining the hours of Baja employees, as well as who decided to select Mr. Contreras for this role and why, and who authorized him to take the actions he took. Ms. Penunuri will also be called to testify about her understanding of wage and hour laws, her understanding of how her employees were being paid, how much, and why, who was in charge of hiring, firing and disciplining her employees, and who was in charge of supervising her employees' work.

Expected Length of Testimony: 1 hour

Name of Witness: Mercedes De Armas

Summary of Testimony:

Ms. De Armas will be called to testify regarding her interactions with Anthony Machado, if any, and her knowledge of Mr. Machado's role in determining how much Baja employees were to be paid, if any. Ms. De Armas will also be called to testify about her role on behalf of Baja with respect to OLS' investigation, the documents she submitted to OLS on behalf of Baja, the written responses to OLS' questions she gave on behalf of Baja, and the testimony she gave both times she was deposed, including but not limited to her testimony regarding Mercedes Accounting's role in processing and issuing payment to the Baja employees. Ms. De Armas will also be called to testify about her interactions with Roberto Contreras, Claudia Penunuri and other Newway employees besides Anthony Machado.

Expected Length of Testimony: 2 hours

Name of Witness: Daron Williams

Summary of Testimony:

Mr. Williams will be called to testify regarding his investigation into the allegations described in the Findings of Fact, Determination and Final Order, his role in creating that document, the reasons OLS made the findings of fact and the determination it did, the research he performed, the documents he authored, and the facts and authority on which OLS relied in determining that Anthony Machado was a joint employer and jointly and severally responsible for the actions and inactions of the other appellants. Mr. Williams will also be called to testify regarding OLS' calculations with respect to wages owed, damages, and the other subjects about which he testified in his deposition.

Expected Length of Testimony: 2 hours

Name of Witness: Katie Jo Keppinger

Summary of Testimony:

Ms. Keppinger will be called to testify regarding her role in supervising the investigation into the allegations described in the Findings of Fact, Determination and Final Order, her role in creating that document, the reasons OLS made the findings of fact and the determination it did, the facts and legal authority on which OLS relied in determining that Anthony Machado was a joint employer and jointly and severally responsible for the actions and inactions of the other appellants. Ms. Keppinger will also be called to testify regarding OLS' calculations with respect to wages owed and damages, and the other subjects about which she testified in her deposition.

Expected Length of Testimony: 1 hour

Name of Witness Kwynne Forler-Grant

Summary of Testimony:

Ms. Forler-Grant will be called to testify regarding Anthony Machado's role as an employee of Newway including what actions he was explicitly or implicitly authorized to take on behalf of Newway, Mr. Machado's remuneration, Newway's time keeping and payment methods both with respect to its employees and with respect to its subcontractors, and which Newway employees were involved in determining pay rates, method(s) of payment, and the preparation or payment of wages or invoices, and how they did so. Ms. Forler-Grant will also be called to testify regarding Newway's suspicions regarding Roberto Contreras and Newway's reasons for requiring that the hours submitted by Mr. Contreras be double-checked.

Expected Length of Testimony: 30 minutes

Mr. Machado also reserves the right to call any witness called by any other party in his case-in-chief.

II. EXHIBITS

Exhibit	Document Description	Bates Number
1	Machado Pay Stubs, 10/1/21 and 10/8/21	MACHADO 000001
2	200110 Email re Possible Construction Case	SEATTLE-OLS-0246-0247 (Bates omitted on original)
3	201207 Email re FW: BCUSAC Interview	SEATTLE-OLS-0250-0256
4	200501 Emails re Fw: Release w/ Attachment	APPBAJA 0138-0140
5	200513 Emails from Roberto Soto to Connor Forler re New Workers	APPBAJA 0141
6	190918 Emails from Kwynne Forler-Grant re Employees for Baja and Potential Fraud	Unmarked, APPBAJA 0151
7	19-528 Email re 1120 Denny Way Safety Performance Monthly Report	APPBAJA 0152-0153
8	Baja Employee Deduction and Contribution Details	APPBAJA 0004-0007
9	OLS Initial Request for Information	APPBAJA 0154-0162
10	Timesheets Signed by Chris B.	APPBAJA 0189-0196

11	Timesheets Signed by Craig Keuchel	APPBAJA 0219-0227
12	Articles of Incorporation for Baja Concrete USA	SEATTLE-OLS 0009-0010
13	LNI Listed Governors for Baja Concrete USA	SEATTLE-OLS 0028-0030
14	WSDR Listed Governors of Newway	SEATTLE-OLS 0037
15	Declaration of Williams ISO Subpoena Duces Tecum	SEATTLE-OLS 0097-0116
16	Notice of Dismissal as to Onni, Franco Corona, and Carlos Penunuri	SEATTLE-OLS 0129
17	Dismissal as to Salvatore Giantomaso and Claudia Penunuri	SEATTLE-OLS 0134
18	Determination and Attachments A and B Thereto	SEATTLE-OLS 0135-0174
19	Subpoena Duces Tecum to All Parties	SEATTLE-OLS 0179-018
20	Timesheets Signed by Tom Grant	APPBAJA 0292-0296
21	Williams letter dated January 11, 2021	SEATTLE-OLS 0260-0265
22	Email from Daron Williams to Alex Larkin and Mark Kimball dated 2/24/2021	SEATTLE-OLS 0491
23	Baja USA Business Card	SEATTLE-OLS 0985
24	Newway Organizational Chart	SEATTLE-OLS 2247
25	Final Calculations Excel Spreadsheet	SEATTLE-OLS 2604
26	Final Calculations Excel Spreadsheet	SEATTLE-OLS 2607
27	Williams 6/10/20 Memo to Case File	SEATTLE-OLS 2579-2594
28	Case Notes	SEATTLE-OLS 3017-3023
29	Timecard for Connor Forler	SEATTLE-OLS-PDR 0563
30	Description of Newway Supervisors	SEATTLE-OLS-PDR 0570-0571
31	Baja Concrete's Responses to Appellant Machado's Requests for Admission dated February 22, 2022	
32	29 CFR 791.2 Joint Employment	
33	Findings of Fact, Determination, and Final Order	
34	Deposition of Kwynne Forler-Grant 30(b)(6)	
35	Deposition of Katie Jo Keppinger 30(b)(6)	
36	Deposition of Daron Williams 30(b)(6)	
37	Deposition of Mercedes De Armas	
38	Deposition of Mercedes De Armas 30(b)(6)	
39	Baja Deductions and Contributions	APPBAJA 0003
40	Initial Request for Information	APPBAJA 0154-0162
41	Payroll Summary	
42	Laborer Timesheets	NEWWAY 002437-002440
43	Baja Concrete LTD Invoice	SEATTLE-OLS 0256

1 Signed and dated this 24th day of May, 2023.

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DECLARATION OF SERVICE

I caused a copy of the foregoing Appellant Antonio Machado's Witness and Exhibit List to be served to the following in the manner indicated:

Via Email to:

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Attorneys for Respondents

On today's date.

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 belief.

Signed and DATED this 24th day of May 2023 in Seattle, Washington.

s/ Elena Maltos

Elena Maltos, Paralegal