BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of Baja Concrete USA Corp., Newway Forming Inc., and Antonio Machado, From a Final Order of the Director, City of Seattle Office of Labor Standards, Respondent.	Hearing Examiner Files: LS-21-002, LS-21-003, LS-21-004 (consolidated) **APPELLANT BAJA CONCRETE USA CORP.'S RESPONSE TO CLOSING ARGUMENTS** Department Reference: 2020-00186-LS

I. INTRODUCTION

COMES NOW Appellant Baja Concrete USA Corp. ("Baja USA"), and presents this response to the closing arguments of Appellant Newway Forming Inc. ("Newway"), Appellant Antonio Machado ("Machado") and Respondent City of Seattle and the Seattle Office of Labor Standards ("OLS") (collectively "the City"). For ease of reference, we address each brief separately.

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II. RESPONSE TO NEWWAY

A. Newway was an Employer

Newway argues that it was not a joint employer. Clearly, under the relevant caselaw (the *Becerra* factors), Newway was an employer of the workers at the Denny Way work site. The ten workers who testified during the hearing testified, *inter alia*, that:

- Newway foremen and superintendents instructed them as to their work;
- They signed in for meetings as Newway employees;
- They used Newway equipment at the work site;
- They used timecards and a time clock at the Newway job site, in a Newway trailer used as an office; and
- Baja USA did not have an office or a desk at the work site.

Without repeating our discussion of each of the 13 *Becerra* factors here (see detailed discussion of the *Becerra* factors in Baja USA's closing argument brief), clearly Newway and its foremen and superintendents exercised control of the workers, the work was performed entirely at a Newway work site, Newway determined break and lunch times, workers began and ended their shifts at the instruction of Newway, Newway equipment was used, and the workers used timecards and a timeclock that were provided by Newway. Baja USA had no presence whatsoever at the work site. They did not have a supervisor, an office, a desk, or equipment at the site.

Newway cites *Bozung v. Condominium Builders, Inc*. for the proposition that its control over the workers did not mean that it was a joint employer. (Newway's brief, pg. 7, lines 17-21). *Bozung* is easily distinguishable from the instant case. *Bozung* dealt with a situation where an employee of a subcontractor was injured while working on the general contractor's work site. *Bozung v. Condominium Builders, Inc.,* 42 Wn. App. 442, 444, 711 P.2d 1090 (1985). Obviously, the instant case does not involve potential liability for an injury. In *Bozung*, the

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injured worker was specifically instructed by the subcontractor's foreman to move earth fill using heavy equipment. *Id.* He was not instructed to do so by the general contractor. *Id.* In fact, the general contractor had only one employee on site at the time of the accident. *Id.* In stark contrast to *Bozung*, the workers in the instant case were not instructed by anyone from Baja USA, they were instructed as to their work by Newway foremen, and there were numerous Newway employees at the work site during all relevant times. As mentioned above and discussed in detail in Baja USA's closing brief, the workers at issue were instructed by Newway foremen as to work hours, breaks, work instructions, etc.

Newway's reliance on *Quinteros v. Sparkle Cleaning, Inc*., a Federal District Court case from the District of Maryland, is likewise misplaced. In *Quinteros*, the court noted that "no employee of Regal (cinemas) supervises, trains, or instructs the members of Sparkle's crews with respect to the performance of cleaning services", and therefore Regal was not a joint employer. *Quinteros v. Sparkle Cleaning, Inc*., 532 F. Supp. 2d 762, 775 (D. Md. 2008). Again, this is in contrast to the instant case where **Newway did supervise** and instruct the workers at issue with respect to the cement finishing work and other work performed at the work site. In fact, the evidence clearly shows that Baja USA did not even have a foreman or other supervisor at the work site and, therefore, could not supervise the workers with respect to their work. The *Quinteros* court distinguished that case from *Zavala v. Wal-Mart Stores, Inc*., 393 F.Supp.2d 295 (D.N.J. 2005), in which Wal-Mart did exercise control over work hours, working conditions, and quality standards of the workers janitorial services, and therefore was a joint employer for purposes of workers bringing a claim under the Fair Labor Standards Act. *Quinteros* at 775, citing *Zavala* at 331.

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The *Quinteros* court was further instructive in applying a six-factor test to determine whether an entity is a joint employer. *Quinteros* at 774, citing *Zheng v. Liberty Apparel Co*., Inc., 355 F.3d 61 (2d Cir. 2003). The *Zheng* factors are:

1. Whether the premises and equipment of the purported joint employer are used for the plaintiffs' (workers) work;
2. Whether the contractors had a business that could or did shift as a unit from one putative joint employer to another;
3. The extent to which plaintiffs performed a discrete line-job that was integral to the process of production for the purported joint employer;
4. Whether responsibility under the contracts could pass from one subcontractor to another without material changes;
5. The degree to which the purported joint employer or their agents supervised the plaintiffs' work; and
6. Whether plaintiffs worked exclusively or predominantly for the purported joint employer. *Zheng* at 774.

Applying the *Zheng* factors to the instant case, the evidence shows that:

1. The Onni/Newway work site and Newway's equipment were used by the workers (not Baja USA's site or equipment);
2. The workers performed work for Newway, and did not shift to Baja USA;
3. The workers performed cement finishing work that was integral to Newway's cement-contractor business;
4. The responsibility for the workers work could pass from one subcontractor to another at the work site without material changes. Adam Pilling, superintendent for Newway, testified that he could not distinguish on site between Newway and Baja USA workers;[1]
5. Supervision of the workers was done by Newway foremen, and to a lesser extent by Roberto, and not by Baja USA; and
6. All of the work performed by the workers was performed exclusively for Newway and Onni.

Clearly, the *Zheng* factor test leads overwhelmingly to the conclusion that Newway was a joint employer of the workers at issue, and Baja USA was not. This is the same conclusion reached when applying the 13 *Becerra* factors, as discussed in detail in Baja USA's closing argument brief.

[1] Adam Pilling testimony, Hearing Day 13, August 30, 2023.

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Finally, Newway relies on 9th Circuit case *Moreau v. Air France*, 343 F.3d 1179 (2003) in support of its argument that Newway was not a joint employer. In *Moreau*, an employee of subcontractor Dynair filed a claim against Air France based on the Family Medical Leave Act ("FLMA"). *Moreau* at 1181-1182. *Moreau* is clearly distinguishable from the instant case. First, *Moreau* involved a question of joint employers specifically with respect to a claim under the FMLA, which is not at issue here. Further, the role of Air France with respect to workers in that case was limited to ensuring that certain performance standards were met and ensuring compliance with various safety and security regulations. *Moreau* at 1188-1189. Importantly, Air France **did not supervise** the workers of subcontractor Dynair, which provided certain ground handling services. *Moreau* at 1186, 1188-1189. In the instant case, it is clear that Newway foremen **did supervise** the workers at issue. In *Moreau*, Dynair used all of its own equipment, not Air France's equipment, with the exception of pallets which held luggage. *Moreau* at 1186. In the instant case, the workers used Newway's equipment, not Baja USA's equipment. Dynair employees were on Air France aircraft approximately 30 minutes a day. *Id.* The workers at issue here were on Newway's jobsite for full work shifts, and full work weeks, and were never present at Baja USA's office.

At pg. 10, lines 19-24, of its closing argument brief, Newway incorrectly states that Baja USA had supervisor Roberto on site, as well as other supervisors. The evidence is very clear that Roberto was not an employee of Baja USA, and therefore not a Baja USA supervisor. There is no evidence to support Newway's claim that Baja USA had other supervisors at the work site. In fact, as discussed in detail in Baja USA's closing argument brief, there is overwhelming evidence that nearly all work performed at the work site was supervised by Newway formen.

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B. Baja USA did not Employ Roberto Soto Contreras

Newway incorrectly states, at pg. 2, lines 18-19, and pg. 4, line 21, of their brief, that "Baja hired Roberto Soto Contreras ("Roberto"), allegedly to performing (sic) a supervisory role for Baja." There is nothing in the record to support an assertion that Baja USA hired Roberto as an employee. Newway proceeds to say "…all evidence demonstrates that Roberto served as Baja's employer and site supervisor." In fact, **no evidence** supports this assertion. No employment agreement between Baja USA and Roberto has been produced, and numerous witnesses testified that they have never seen anything in writing to show that Roberto was employed by Baja USA. As discussed in Baja USA's brief, with reference to testimony by Claudia Penunuri and Mercedes De Armas, Roberto was an independent contractor, and was never employed by Baja USA. Try as they may, the City, Newway and Machado cannot retroactively make Roberto a past employee of Baja USA merely by labeling him as such.

C. Roberto, not Baja USA, Submitted Invoices to Newway

At pg. 3, lines 5-7 of their brief, Newway asserts that "Baja would submit periodic invoices with timesheets or timecards attached to them." In fact, Roberto submitted invoices and summaries of hours to Newway. Importantly, the evidence shows that the information he submitted to Newway differed from the information on hours he provided to Baja USA, through Mercedes Accounting, for use in processing payroll. (see Baja USA's brief at pg. 16, lines 10-15).

D. The Office of Labor Standards ("OLS") Investigation

At pg. 4, line 11 of their brief, Newway incorrectly states that "The OLS investigation largely focused on Baja." This is not the case. In fact, the OLS, in the Determination, makes a broad-reaching statement, unsupported by evidence, within the Determination itself, that "There

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is no dispute that Respondent Baja Concrete employed the employees listed on Attachment B." (HEX 87, Determination, pg. 4)[2]. In the Determination, the OLS proceeds to devote a lengthy discussion explaining why Newway, Machado and Roberto were joint employers. (HEX 87, Determination, pgs. 4-12, 16-19).

E. Newway's 'Policy' Argument is Irrelevant

On pgs. 21-22 of their brief, Newway argues that holding them to be a joint employer would have significant policy implications which could impede the normal contractor-subcontractor relationship. Newway should not be permitted to hide from its obligations as an employer based on such an argument. The 13 *Becerra* factors set out the relevant and applicable test for joint employment, and do not carve out an exception for any particular industry. The sole case cited by Newway in support of its policy argument, a non-binding Federal District Court case out of Maryland, *Jacobson v. Comcast Corp*., 740 F. Supp.2d 683 (D. Md. 2010), involves a business relationship and fact pattern vastly different from the instant case. In *Jacobson*, Comcast entered into written contracts with installation companies, which in turn hired independent contractor technicians who carried out installations in Comcasts' customers' homes to establish a connection with the Comcast network. *Jacobson* at 686. The *Jacobsen* court noted that Comcast was not responsible for the day-to-day management of the technicians. *Jacobson* at 691. This is in contrast to the instant case where Newway foremen did supervise the workers at issue and were responsible for the day-to-day management of the workers. The *Jacobson* court further noted that Comcast's supervision of technicians was qualitatively different from the control exercised by employers over employees. *Id* at 691-692. In the instant case, the control, direction and supervision exercised by Newway superintendents and foremen

[2] As used herein, references to HEX and to Exhibit are references to the evidence admitted during the hearing in this matter, listed on the Hearing Examiner Exhibit List.

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over the workers was essentially identical to that of an employer over its employees, as discussed in detail in Baja USA's closing argument brief and, in fact, as discussed by the City in the OLS Determination. (HEX 87, Determination).

F. Newway's Argument that Baja USA Failed to Respond to the OLS is Not Supported by the Record

On pg. 23 of their brief, Newway argues that Baja USA failed to respond to the OLS. As discussed in Baja USA's closing argument brief, Baja USA cooperated with OLS throughout its investigation in this matter. Mercedes Accounting, on behalf of Baja USA, responded to OLS' written questions and provided documents requested by OLS, and corresponded with OLS investigators. Exhibit 32 is the OLS request for information submitted to Baja USA, and Baja USA's responses thereto, prepared by Mercedes Accounting at the request of Claudia Penunuri of Baja USA. Exhibit 100 is a series of email correspondence between OLS and Mercedes De Armas of Mercedes Accounting, from September through early December 2020, which shows a clear and continuous effort by Baja USA to cooperate with the OLS in its investigation.

Claudia Penunuri testified that she requested the assistance of Mercedes Accounting in this regard given that Mercedes Accounting processed payroll for the workers and was therefore in a good position to provide responses to OLS' requests.

III. RESPONSE TO MACHADO

A. Clarifying Certain Assertions and Implications

Here, we briefly clarify a number of points asserted by Machado in his closing argument brief. First, Machado asserts or implies that Roberto was an employee and supervisor for Baja USA, which is incorrect. (see Machado brief at pg. 2, lines 13 and 15, pg. 5, line 26). As discussed above and in Baja USA's closing argument brief, at no time was Roberto an employee of Baja USA. He was an independent contractor.

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Second, Machado refers to the workers at issue as Baja employees, which is incorrect. (see Machado brief at pg. 2, line 8, pg. 3, line 6, pg. 4, line 9). As argued in Baja USA's brief, and as Baja USA has argued throughout the appeal process, the 53 workers listed in the OLS Determination were not employees of Baja USA. In fact, the OLS went to great lengths in its Determination (HEX 87) to explain why Newway, Machado and Roberto were joint employers of the workers, while saying very little about Baja USA. Essentially, Baja USA processed payroll for the workers, using the services of Mercedes Accounting, based on wage and other information provided by Roberto. Baja USA's involvement amounted to one or two of the 13 *Becerra* factors, at the most.

Third, Baja USA agrees with Machado's assertion that the OLS did not support the facts underlying its finding that Machado and Baja USA were financially intertwined. (see Machado brief pg. 8, line 21 to pg. 9, line 11). The OLS relies on a single check stub from Baja USA to Machado to support its assertion. The evidence produced at the hearing was clear in that there was no testimony to support any such assertion that Baja USA and Machado were financially intertwined, or that the check stub was related to a kickback scheme. In fact, the record is clear that the payment was repayment of a personal loan Machado had made to Carlos Penunuri.[3]

B. Excessive Damages and Penalties

Machado argues that the damages and penalties assessed by OLS are excessive. (see Machado brief at pg. 9, line 18 to pg. 10, line 5). The wage claim in this case is a first time wage claim for Baja USA, and Baja USA did cooperate with the OLS in its investigation. There is no justification for the OLS imposing any discretionary damages and penalties against Baja USA. As discussed in Baja USA's closing argument brief, Baja USA cooperated with OLS throughout

[3] Machado testimony, Hearing Day 9, August 22, 2023. Machado brief incorrectly states it was a loan from Machado to Roberto.

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its investigation in this matter, has never been the subject of a wage claim prior to this matter, and did not interfere, willfully or otherwise, with OLS in its investigation. Mercedes Accounting, on behalf of Baja USA, responded to OLS' written questions and provided documents and information requested by OLS, and corresponded with OLS investigators. Exhibit 32 is the OLS request for information submitted to Baja USA, and Baja USA's responses thereto, prepared by Mercedes Accounting at the request of Claudia Penunuri of Baja USA. Exhibit 100 is a series of email correspondence between OLS and Armas of Mercedes Accounting, from September through early December 2020, which shows a clear and continuous effort by Baja USA to cooperate with the OLS in its investigation. Machado's implication of Baja USA's noncompliance is simply not supported by the record. (see Machado brief at pg. 10, line 8).

C. Hearing Examiner's Evidentiary Rulings

Baja USA agrees with Machado's argument that much of the evidence proffered by OLS in support of its Determination is irrelevant and inadmissible, and the Hearing Examiner's failure to exclude such evidence was in error. (see Machado brief at pgs. 11-12). The Hearing Examiner admitted hearsay unsworn statements, from unreliable sources, by purported witnesses who Baja USA did not have an opportunity to cross-examine, in violation of the hearing examiner rules. At most, out of the 53 alleged workers at issue, only the testimony of the ten workers who testified during the hearing should be considered. The unavailability of workers interviewed by the OLS as part of its investigation, as well as the unavailability of the overwhelming majority of the 53 workers, unfairly prejudiced Baja USA.

Baja USA presented their arguments in its motion to exclude evidence, which the Hearing Examiner erroneously denied.

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IV. RESPONSE TO CITY OF SEATTLE OLS

A. Joint Employers

The City's closing argument brief is largely a re-hash of the same caselaw and arguments made by the City in their motion for summary judgment in this matter. Baja USA agrees that the 13-factor joint employer test analyzed in *Becerra v. Expert Janitorial, LLC*, 181 Wash. 2d 186, 332 P.3d 415 (2014) is applicable law for the instant case. The 13-factor analysis is presented at pgs. 3-11 of Baja USA's closing argument brief, and is therefore not repeated here.

At most, two of the *Becerra* factors, preparation of payroll and payment of wages, and the labor of the workers being important to Baja USA's business, are applicable to Baja USA. In contrast, numerous of the 13 factors are applicable to Newway, Roberto and Machado. In addition to the factor test, *Becerra* provides guidance on the issue of whether a party should be held liable as a joint employer, depending on the degree of knowledge of wage or hour violations. *Becerra* at 198. Specifically, the *Becerra* Court stated: "*Here, our Court of Appeals properly found that these factors may include whether the putative joint employer knew of the wage and hour violation* …" *Id (emphasis added)*. The evidence does not show that Baja USA had knowledge of any purported lack of overtime compensation, missed breaks, or hours worked that may have exceeded the hours Roberto reported to Baja USA. Under *Becerra*, the Supreme Court makes it clear that such lack of knowledge is a consideration tending to discourage a finding that such a party is an employer under the joint employer doctrine.

B. Roberto Soto Contreras

The City's closing argument brief assumes, without evidence, that Roberto was employed by Baja USA. (see City brief at pg. 8). The City's reliance on workers' testimony that indicated that Roberto worked for Baja USA fails because the workers lacked personal knowledge of any

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relationship between Roberto and Baja. As discussed above and in Baja USA's closing argument brief (and therefore not repeated here), the evidence is clear that Roberto was not employed by Baja USA. The City argues that the ten workers who testified during the hearing said Roberto worked for Baja USA. However, not one of them testified that they had ever seen anything in writing to indicate that Roberto worked for Baja USA, and no such evidence was offered or admitted during the hearing. (see City brief at pg. 3, lines 14-16). In fact, the City essentially acknowledged that Roberto reported to Carlos Penunuri in Canada. (see City brief at pg. 3, lines 21-22). The evidence shows that Carlos Penunuri was not involved in Baja USA and that there is no actual affiliation (no common ownership or control) between Baja USA and Baja in Canada.

C. Factual Clarifications

Here, we clarify certain factual assertions argued by the City, and acknowledge certain points where the City is Correct. The City correctly explains that, at the Denny Way work site, meetings about scheduling would take place often between Newway and Onni regarding the work to be accomplished and whether the project was remaining on schedule. From those meetings, Newway would know the number and type of workers. Newway set the pace of work according to testimony by Kwynne Forler-Grant ("Forler-Grant"). According to Adam Pilling of Newway, Baja USA was not a party to those meetings. (see City brief, pg. 4, lines 7-13).

The City correctly states that the workers were informed of their pay verbally by Roberto, not by Baja USA. (see City brief, pg. 5, lines 1-2). The City correctly states that Baja USA paid Mercedes Accounting to process the payroll of the workers. (see City brief, pg. 5, line 5).

The City correctly explains that workers provided time sheets to Roberto, that Forler-Grant testified that Newway had to approve the workers' time, that Newway exercised direct

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control over timekeeping, and that workers and Adam Pilling (Newway) testified that the time clock was kept in a Newway trailor. (see City brief at pg. 5, lines 13-22). The City incorrectly refers to testimony of Forler-Grant saying that the time clock implementation was due to dishonesty, because Baja charged Newway for hours that workers did not work. (City brief at pg. 5, lines 22-23). In Fact, Forler-Grant testified that they never did confirm that any such dishonesty occurred, and no evidence was produced to show such dishonesty.[4]

The City's reference to King County Superior Court case #22-2-04760-7 SEA (the "King County Case"), in which Baja USA was a plaintiff and Newway was a defendant, is not relevant to the instant case. (see City brief, pg. 5). The King County Case related to a time period which is not the same as, and does not overlap with, the relevant time period for the instant case.[5] The King County Case involved additional parties which are not parties to the instant case. The King County Case did not involve a wage claim. It involved claims of breach of contract, unjust enrichment, lien foreclosure, among others. Finally, the King County Case was resolved by a mutual agreement among all parties to that case. The King County Case is not relevant, lacks probative value, and was admitted in error by the Hearing Examiner.

The City discusses a "suspicious payment" from Baja USA to Machado. (see City brief at pg. 6). As discussed above, there was nothing suspicious about that payment. The evidence is clear that the payment was simply repayment of a personal loan Machado had made to Carlos Penunuri.

The City's discussion about Newway's control of supervision, corrective actions, and meetings, at City's brief, pgs. 6-7, is largely correct, in that:

[4] Kwynne-Grant testimony, Hearing Day 9, August 22, 2023.
[5] The relevant time period for the King County Case was January 2021 through May 2021. (Exhibit 35, Complaint, paragraph 3.1). The relevant time period for the instant case is February 2018 through August 2020. (Exhibit 87, Determination, pg. 1).

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- Workers testified that Newway provided significant onsite direction;
- Newway foremen provided job task direction;
- Pedro from Newway supervised the finishers;
- Victor Martinez from Newway supervised the laborers;
- The workers would go to Pedro (of Newway) with questions;
- Newway foremen directed workers paid by Baja USA;
- Newway provided corrective action;
- The workers were required to attend Newway's headcount and safety meetings; and
- Meal and rest breaks were determined by Newway foremen.

D. Purported Violations of SMC Ordinances

The City relies on certain timesheets, including Exhibit 12, in support of its discussion regarding overtime. (see City brief at pg. 9, lines 11-17). Importantly, those timesheets, as well as those in Exhibits 13 and 43, were not provided to Mercedes Accounting. Rather, Roberto apparently provided a different set of timesheets to Mercedes Accounting for purposes of processing payroll.[6] The timesheets provided by Roberto to Mercedes Accounting are found at Exhibits 101 and 102.[7] Further, Mercedes Accounting relied on information provided to it by Roberto. To the extent there may have been additional hours (overtime hours) worked, missed meal and rest breaks, and unauthorized deductions, Mercedes Accounting and Baja USA were not in a position to know this information because they relied solely on the information that Roberto provided to them. Baja USA had no presence at the work site, and was not involved in Newway's requests for number of workers, requests that overtime be worked, or review and approval of hours worked, which was done by Newway in coordination with Roberto.

As discussed previously, *Becerra* provides guidance on the issue of whether a party should be held liable as a joint employer, depending on the degree of knowledge of wage or hour violations, explaining: "*Here, our Court of Appeals properly found that these factors may include whether the*

[6] Mercedes De Armas testimony, Hearing Day 14, September 20, 2023.
[7] Mercedes De Armas testimony, Hearing Day 14, September 20, 2023.

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putative joint employer knew of the wage and hour violation …" *Becerra* at 198. *Id (emphasis added)*. Baja USA did not have knowledge of any purported lack of overtime compensation, missed breaks, or hours worked that may have exceeded the hours Roberto reported to Baja USA. Contreras and Newway were in a position to know such information.

E. Calculations

As discussed in Baja USA's closing argument brief, the OLS relied on an unreasonably small sample size of workers (eight) and information in support of its calculations of wages for 53 workers. "The Washington State Supreme Court has discussed the problematic nature of small sample sizes in disparate impact claims." *Arroyo v. Pac. Mar. Ass'n*, 26 Wn. App. 2d 779, 806, 529 P.3d 1 (2023). "Because statistical evidence derived from an extremely small sample size has little predictive value, and is therefore unreliable, the use of such evidence must be closely scrutinized to avoid inferences of disproportionality, which are based upon conjecture, speculation, or chance …" *Id.*

"[E]xpert testimony should be presented to the trier of fact only when the scientific community has accepted the reliability of the underlying principles." *State v. Copeland*, 130 Wn.2d 244, 255, 922 P.2d 1304 (1996), citing *State v. Canaday*, 90 Wn.2d 808, 585 P.2d 1185 (1978). "The *Frye* standard recognizes that 'judges do not have the expertise required to decide whether a challenged scientific theory is correct' and therefore courts 'defer this judgment to scientists.'" *Id*, citing *State v. Cauthron*, 120 Wn.2d 879, 887, 846 P.2d 502 (1993).

The OLS' assumptions, speculation and conjecture in calculating the wage claim should not be accepted as the basis for a total claim of over $2 million. At most, only the testimony of workers who actually testified during the hearing should be considered in relation the Hearing Examiner's decision on wages, overtime and breaks, in this case. Neither Baja USA, Newway

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nor Machado had an opportunity to cross examine any workers who did not testify at the hearing. Given that the opportunity to cross examine witnesses is required under the Hearing Examiner Rules, any OLS interview notes from their discussions with witnesses who did not testify, and any OLS personnel hearsay testimony, should not be considered in connection with the determination of the wage claim, damages and penalties.

Finally, given that the instant wage claim is a first-ever wage claim against Baja USA, and given that Baja USA cooperated with the OLS in its investigation, no discretionary damages or penalties should be imposed against Baja USA.

V. CONCLUSION

For the reasons discussed herein, and in Appellant Baja Concrete USA Corp.'s closing argument brief, and based on the record before the Hearing Examiner, Appellant Baja Concrete USA Corp. hereby requests that the Hearing Examiner dismiss Baja Concrete USA Corp. with prejudice from this action and reverse the Determination.

Respectfully Submitted this 15th day of November, 2023.

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I hereby certify that on November 15, 2023, I caused the following documents to be served: Appellant Baja Concrete USA Corp.'s response to closing argument following the hearing, on the persons noted below via the methods indicated:

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