

## Regulatory Action and Litigation at California Cartage

California Cartage, based in Wilmington, CA, is one of the largest goods movement companies in America, with warehouses and port trucking operations across the U.S. and in Mexico. **Referred to herein as “Cal Cartage,” this family of companies is owned and managed by Robert Curry, Sr. and his family, and represents** the largest trucking operation at the Ports of Los Angeles and Long Beach by a wide margin. **Today, workers have gone on strike at the following divisions:**

- **Cal Cartage Container Freight Station** in Wilmington is a warehouse and freight center on Port of LA property and employs approximately 500 workers, with 80 percent of the workforce being employed through a temp agency, Core Employee Management. The company has been cited for serious health and safety violations twice in the past three years, and workers face serious retaliation resulting in unfair labor practices charges and five strikes.
- **K&R Transportation, California Cartage Express, and California Multimodal Inc. (CMI)** are three of several port trucking companies that Cal Cartage runs at the Ports of LA and Long Beach. Combined, these three companies move the largest amount of cargo of any company at the ports. K&R and California Cartage Express operate out of the same property as the Cal Cartage Warehouse, and CMI operates out of a nearby Wilmington yard. Combined, more than 600 alleged misclassified drivers work for these three companies.

### Cal Cartage Port Trucking Operations

The Cal Cartage family of companies includes five major trucking operations in Southern California. The four largest - K&R Transportation, California Cartage Express, ContainerFreight EIT and California Multimodal LLC – have been facing multiple claims in the courts and government agencies for misclassifying their drivers. In several instances, agencies have already determined that drivers were, in fact, employees.

#### **Agency investigations and determinations:**

##### ***California Labor Commissioner:***

###### ***Employee determinations:***

- Over the past two years, there have been at least nine decisions issued by the California Labor Commissioner in individual claims filed by Cal Cartage drivers working for K&R Transportation, Cal Cartage Express, ContainerFreight and CMI. All of these claims found that the drivers were, in fact, employees, and not independent contractors. Together, those decisions ordered Cal Cartage to pay those seven drivers a total of \$1,096,480 for Labor Code violations including unlawful deductions and unreimbursed expenses. Cal Cartage appealed all of these cases, settling two of them, while the other seven remain pending in Superior Court.

###### ***Pending claims:***

- There are an additional 22 Labor Commissioner claims that drivers have filed against Cal Cartage, all of which appear to be pending, filed by 18 K&R drivers and four CMI drivers. The total liability for those 22 claims is \$3,786,792.

### ***California Employment Development Department (EDD)***

- At least two K&R drivers have been determined to have been employees – not independent contractors – by the California EDD in individual benefits determinations.

### ***National Labor Relations Board (NLRB)***

- On May 23, 2017 the Teamsters filed Unfair Labor Practice charges with the NLRB against K&R Transportation for retaliating against a driver, Jaime Martinez, by refusing to allow him to return to work after he had recovered from an injury sustained when the truck he was driving for K&R rolled over him.

### **Private Litigation:**

#### ***Misclassification Actions***

- Cal Cartage is facing two class action lawsuits for multiple Labor Code violations including willful misclassification, unlawful deductions, unreimbursed expenses, unpaid minimum wages, and failure to provide meal and rest breaks, along with violation of California’s Unfair Competition Law. All of these cases were filed in California Superior Court and remain pending.<sup>1</sup> The company recently settled in two similar suits.<sup>2</sup>
- Cal Cartage is also facing two separate “mass action” lawsuits in CA Superior Court filed by groups of drivers against K&R for misclassification and wage theft.<sup>3</sup>

## **Cal Cartage Warehouse**

While Cal Cartage workers used to have good paying jobs that provided benefits, they have not had representation from a union in over 30 years and conditions have suffered. Workers are now paid the state minimum wage with little or no benefits (even though they are entitled to a higher wage under the Los Angeles Living Wage Ordinance), and work in health and safety conditions that are deplorable.

### **Health & Safety:**

The warehouse facility has health and safety issues. The building was built in the 1940s and is poorly maintained. Several workers have been hurt just trying to walk around the facility due to potholes and poor infrastructure. The machines, including forklifts, are not maintained and often have faulty brakes and horns—leading to accidents. Workers filed a formal complaint with Cal/OSHA in June 2015, triggering an investigation at the facility. In November 2015, over \$21,000 in citations were issued—4 serious and 6 general penalties. It was noted in these citations that the chipped paint at this facility contains lead.

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<sup>1</sup> *Campos v. California Cartage Company LLC et al*, Case No. BC570310; *Varela et al v. K&R Transportation LLC*, Case No. BC643325

<sup>2</sup> *Constanza v. K&R Transportation, ContainerFreight, et al*, Case No. CIVDS1615424; *Martinez v. California Multimodal LLC*, Case No. BC583858

<sup>3</sup> *Alonso Jimenez Torres et al v. K & R Transportation LLC*, Case No. BC660910; *Jose Luis Aguilar Et Al v. California Cartage Company LLC*, Case No. BC577440

Cal/OSHA reinvestigated the facility a year later, resulting in additional serious citations in November 2016 amounting \$67,150 for the warehouse and \$51,275 for the staffing agency. Citations included not providing workers with steel toed boots, not properly attaching shipping containers to the dock, and repeat violations for unsafe brakes on forklifts. The investigation regarding the company's abatement of these citations is still active.

### **National Labor Relations Board:**

On June 12, 2017, a trial began at the NLRB's Region 21 on several Unfair Labor Practice Charges (ULPs), summarized below:

- A regional office of the National Labor Relations Board (NLRB) found merit to Unfair Labor Practice charges filed in September and October 2015 and issued a complaint and notice of hearing on March 21, 2016.
  - The NLRB Regional Office began its investigation in September 2015, when the Warehouse Worker Resource Center (WWRC) filed an unfair labor practice (ULP) charge with the NLRB, alleging that California Cartage had interfered with workers' concerted and protected activities by threatening supporters with discharge and attempting to initiate a physical altercation with a worker due to a worker delegation.
  - The NLRB Regional Office continued their investigation in October 2015 when new ULPs were filed alleging that California Cartage had interfered with workers' concerted and protected activities. The company instituted unlawful workplace rules to limit workers ability to petition and delegate management.
- In April 2016, WWRC filed charges alleging that California Cartage and Associated Management Resources, Inc. (AMR staff agency) interfered with workers' protected activities by threatening and interrogating supporters with termination. Additionally, the charges alleged that Cal Cartage violated federal labor laws by retaliating against a supporter by discharging Manuel Reyes for his protected concerted activities.

Additionally, in 2016, the Teamsters filed ULP charges against California Cartage for several unfair labor practices including the Company Owner Bob Curry threatening to close the warehouse if workers unionized. These charges are pending.

### **Private Litigation:**

On December 17, 2014, workers from the California Cartage warehouse on Pacific Coast Highway at the Port of Los Angeles filed a [class action lawsuit](#) alleging millions of dollars in wage theft.<sup>4</sup> The workers, many of whom are paid the state minimum wage and have worked through a staffing agency for years, are entitled to the benefits of the Los Angeles Living Wage Ordinance because the warehouse where they work is operated on City of Los Angeles property. Despite this, the workers at

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<sup>4</sup> *Ayala, et al. v. California Cartage Company, Inc., et al*, Case No. BC566992

the warehouse have not been paid the applicable living wage rate in the 18 years since the ordinance passed.

Under the City of Los Angeles Living Wage Ordinance, Cal Cartage is currently required to provide each worker with either \$12.52 per hour for an all-cash wage or \$11.27 per hour plus \$1.25 per hour in health benefits and as of July 1, 2017, it will go up to be \$12.73 all-cash wage or \$11.48 plus \$1.25 in health benefits. Further, each worker is entitled to 12 paid days off per year. The law extends the obligation to any staffing agencies that are contracted by Cal Cartage and that directly employ more than 50 percent of the workers in the warehouse facility.

**Cal Cartage's key customers include:** Lowe's, Amazon, TJ Maxx, Home Depot, Kmart and Sears.