

U.S. Regulatory Action and Litigation at NFI/California Cartage

Updated April 8, 2019

NFI Industries is one of the largest goods movement companies in America with warehouses and port trucking operations across the U.S.¹ In October 2017, NFI acquired the California-based family of companies, California ('Cal') Cartage.² NFI/Cal Cartage represents the largest trucking operation at the Ports of Los Angeles and Long Beach by a wide margin.

Cal Cartage Port Trucking Operations

The NFI/Cal Cartage family of companies includes five major trucking operations at the Ports of Los Angeles and Long Beach, California. The four largest - **K&R Transportation California LLC; Cal Cartage Transportation LLC, Container Freight Transportation LLC, and CMI Transportation LLC**³ – have been facing multiple claims in the courts and government agencies for misclassifying their drivers as independent contractors. In several instances, agencies have already determined that drivers were, in fact, employees. K&R and California Cartage Express operate out of the same property as the Cal Cartage warehouse (described in the following section), CMI operates out of a nearby Wilmington yard, and Container Freight operates out of a yard in Long Beach. Combined, more than 600 alleged misclassified drivers work for these companies.

On January 16, 2019, NFI announced that it would shut down its operations at the Wilmington warehouse. A week after the announcement, the Board of Harbor Commissioners voted to finalize a settlement and gave NFI six months to vacate Port property.

Previous to this, on October 12, 2018, the Los Angeles City Council vetoed the Board of Harbor Commissioners' earlier approval of a revocable permit between the Port of Los Angeles and California Transload Services LLC.⁴ The council's unanimous vote sent the land use agreement back to the Board of Harbor Commissioners and requested that they include "safeguards to protect against labor disruptions." An amending motion was also introduced for the Port of Los Angeles to begin looking for a new tenant and requiring that any new tenant retain the workers employed at the warehouse. As a result, the Port of Los Angeles issued a thirty-day notice that required Cal Cartage to vacate the property.

Previously, in an unprecedented move, on May 8, 2018, the Los Angeles City Council rejected the City's Board of Harbor Commissioners approval of California Cartage's Foreign-Trade Zone (FTZ) operating agreement at the Port of Los Angeles.⁵ Under this federal program, California Cartage's customers received incentives such as deferred and reduced tariffs. After asserting jurisdiction over the matter, the City Council voted unanimously to veto the Harbor Board of Commissioners' approval of the permit due to the multiple violations at the facility such as health and safety and labor violations, which place California Cartage in violation of the terms of the FTZ operating agreement. These and other violations and ongoing investigations are outlined below:

¹ <https://www.nfiindustries.com/about-nfi/locations/>

² California Cartage Co. Acquired by NFI Industries. (2017, October 3). Retrieved from <http://labusinessjournal.com/news/2017/oct/03/california-cartage-co-acquired-nfi-industries/>

³ In the second half of 2017, new entity names were filed in Delaware and California for these four companies. Previous entity names used are: (KRT2931 LLC fka K&R Transportation, LLC; CCX2931 LLC fka California Cartage Express LLC; CFT2931 LLC fka ContainerFreight EIT; and CM2931 LLC fka California Multimodal LLC)

⁴ <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=13-0440-S2>

⁵ <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=13-0440-S1>

Agency Investigations and Determinations:

Los Angeles City Attorney

- On January 8, 2018, Los Angeles City Attorney Mike Feuer announced that his office had filed lawsuits against Cal Cartage Express, CMI, and K&R Transportation for violation of California's Unfair Competition Law by misclassifying port truck drivers as independent contractors and evading paying taxes and providing benefits to drivers.⁶ The case remains pending.

Los Angeles City Office of Wage Standards

- There are currently two pending investigations against two NFI-owned trucking companies for violations of LA's minimum wage ordinance. In November 2018, drivers at Cal Cartage Express filed a claim for unpaid minimum wages and failure to provide paid sick days. In a similar pending case, in October 2018, the Office of Wage Standards requested the Board of Public Works issue a subpoena to obtain payroll information necessary to conduct an investigation of wage theft at K&R Transportation. Both investigations remain pending.

California Labor Commissioner

Employee determinations:

- Over the past four years, there have been at least 36 decisions issued by the California Labor Commissioner in individual claims filed by port truck 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 the four companies to pay those 36 drivers a total of **\$7,326,334 million** for Labor Code violations including unlawful deductions and unreimbursed expenses. 12 cases were appealed and then settled. The 10 CMI and 14 Cal Cartage Express Order, Decision or Award (ODAs) issued in December 2018 have been appealed and the cases remain pending.

Pending claims:

- There are an additional 10 K&R claims that remain pending. These drivers had their hearings in December 2017 and a decision is pending. The **total liability for the 10 claims is \$1.878,929.**

California Employment Development Department (EDD)

- At least four K&R Transportation drivers have been determined to have been employees – not independent contractors – by the California EDD in individual benefits determinations.
- Since June 2017, the California EDD has filed at least eight tax liens against K&R Transportation for a total of **\$159,764**. It is unknown if K&R Transportation has appealed these decisions.

Private Litigation:

- On February 6, 2019, port truck drivers at K&R filed another lawsuit for misclassification and other labor code violations. The case remains pending.⁷
- In recent years, Cal Cartage has faced at least five class action lawsuits in California Superior Court for multiple Labor Code violations, including willful misclassification, unlawful deductions, unreimbursed

⁶ *The People of the State of California v. CMI Transportation*, Case No. BC689321; *The People of the State of California v. K&R Transportation*, Case No. BC689322; *The People of the State of California v. California Cartage Express*, Case No. BC689320

⁷ *Juan Jose Rodriguez v K&R Transportation LLC*, Case No. 19STCV03772

expenses, unpaid minimum wages, and failure to provide meal and rest breaks, along with violation of California's Unfair Competition Law. In December 2017, the last pending case settled for \$3.5 million and a final judgement was issued August 10, 2018.⁸ The company has settled four similar suits.⁹ The terms of these four settlements are unknown.

- Cal Cartage also settled two “mass action” lawsuits for misclassification and wage theft in the California Superior Court involving 55 drivers.¹⁰ The terms of these two settlements are unknown.

Cal Cartage Warehouse

Cal Cartage Container Freight Station in Wilmington is a warehouse and freight center on Port of LA property and employs approximately 500 workers, with 40-50 percent of the workforce being employed through a temp agency. While Cal Cartage warehouse 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.

Health & Safety

The warehouse facility has ongoing health and safety issues. The building was built in the 1940s and has been poorly maintained. Several workers have been hurt walking due to potholes and poor infrastructure. The machines, including forklifts, are not adequately maintained and often have faulty brakes and horns, which has led to accidents.

California's Division of Occupational Safety and Health (DOSH), known as Cal/OSHA, has repeatedly cited Cal Cartage since 1993, including multiple citations over the past three years:

Workers filed a formal complaint with Cal/OSHA in 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. Records show there was a formal settlement entered and details are unknown.¹¹

Cal/OSHA reinvestigated the facility a year later, resulting in additional serious citations by the agency in November 2016 amounting \$67,150 for the warehouse and \$51,275 for the staffing agency.^{12 13} 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. Cal Cartage's investigation remains open. Both Cal Cartage and the staffing agency appealed the citations. An administrative Law Judge's (ALJ) decision was issued for the staffing agency. OSHA's inspection detail shows the case has

⁸ *Campos v. California Cartage Company LLC et al*, Case No. BC570310

⁹ *Constanza v. K&R Transportation, ContainerFreight, et al*, Case No. CIVDS1615424; *Martinez v. California Multimodal LLC*, Case No. BC583858; *Varela et al v. K&R Transportation LLC*, Case No. BC643325; *Almanza Melendez v. California Multimodal LLC*, Case No. BC633972

¹⁰ *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

¹¹ U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1079165.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1079165.015

¹² U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1152445.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1152445.015

¹³ U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1151085.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1151085.015

been closed for the staffing agency after issuing a fine of \$7,875 for eight violations, including one serious violation. The Cal Cartage case remains open.

On March 2017, Cal/OSHA issued another citation to Cal Cartage of \$36,000 and the staffing agency another citation of \$36,000 for an accident occurred at the workplace.^{14 15} Both inspection details show the two cases have been closed and Cal Cartage and the staffing agency were fined \$12,700, each.

Workers filed a third Cal/OSHA complaint in November 2017 and on June 6, 2018 the warehouse was issued serious and general citations totaling \$5,430 for the warehouse and \$5,430 for the staffing agency.^{16 17} Both investigations remain pending as violations are under contest.

National Labor Relations Board

- On October 10, 2018, new unfair labor practice (ULP) charges were filed against NFI owned Cal Cartage warehouse and CORE Employee Management, a staffing agency and joint employer, for interrogation of employees about union and protected concerted activities; threatening employees with job loss; and threatening employees with plant closure. The case remains pending.
- On September 28, 2018 Region 21 of the NLRB issued a consolidated complaint and notice of hearing to NFI California Cartage Holding Company, California Cartage Distribution, and California Transload Services as a single employer, and against these same NFI group entities and CORE Employee Management as joint employers. The complaint alleges numerous violations of the National Labor Relations Act (NLRA), including for disciplining and terminating a warehouse worker in retaliation for his union activities and other protected concerted activities, such as informing his co-workers of their right to take a heat break, and actually encouraging and taking a heat break with them. The case was settled in December 2018.
- On February 28, 2018, Administrative Law Judge (ALJ) Ariel Sotolongo issued a decision finding that California Cartage and its subsidiary Orient Tally violated workers' rights at the 2401 E. Pacific Coast Highway, warehouse, including engaging in unlawful interrogation, implied threats of termination, and confronting workers in a physically aggressive fashion. This decision ordered the company to cease and desist the unlawful behavior, and was issued following a hearing held in June 2017. The case arose after Region 21 of the National Labor Relations Board (NLRB) issued a March 2016 Consolidated Complaint (Cases: 21-CA-160242 and 21-CA-162991) against California Cartage for ULP charges. On December 4, 2018, the NLRB issued a decision on the exceptions to ALJ Sotolongo's decision and reversed his finding regarding the implicit threats.
- From late 2016 through February 2018, workers at the same warehouse have filed numerous ULP charges (Cases: 21-CA-190500 and 21-CA-207939) with the International Brotherhood of Teamsters against California Cartage for several unfair labor practices. A trial for the consolidated case was held the week of July 23, 2018 and a decision is pending.

¹⁴ U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1182473.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1182473.015

¹⁵ U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1182838.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1182838.015

¹⁶ U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1281909.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1281909.015

¹⁷ U.S. Occupational Safety and Health Administration (OSHA) Inspection No. 1281931.015
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1281931.015

United States Department of Labor (DOL)

On September 13, 2018, the US DOL announced that it found that California Cartage Company and five of its subcontractors had violated federal contract provisions of the McNamara-O'Hara Service Contract Act (SCA). Its investigation determined that Cal Cartage owed over \$3.5 million to 1,416 workers for failing to pay the federal prevailing wages and required health and welfare benefits to workers at the Centralized Examination Station it operates for the US Customs and Border Patrol in Carson, CA.¹⁸ There is also a separate DOL investigation for SCA violations regarding a federal contract to move military cargo that was stored at the Cal Cartage Wilmington warehouse site.¹⁹ The status of that investigation is unknown.

CA Department of Fair Employment Housing

In September 16, 2018, workers at the Wilmington warehouse filed two complaints with the CA Department of Fair Housing and Employment (DFEH) for racial discrimination. A third complaint was filed September 26, 2018.²⁰ The status of these complaints are unknown.

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, primarily for failure to comply with the Los Angeles Living Wage Ordinance, which applies to businesses such as California Cartage that contract with the City of Los Angeles.²¹ On November 28, 2018, the court issued a final approval of a \$1.9 million settlement the workers reached with the company. A hearing is scheduled for August 7, 2019 regarding compliance with the settlement.

NFI/Cal Cartage's key customers include: Lowe's, Amazon, TJ Maxx, Kmart, Sears, Puma, Vans, and New Balance.

¹⁸ <https://www.dol.gov/newsroom/releases/whd/whd20180913>

¹⁹ <https://www.usatoday.com/story/news/2017/11/10/federal-agencies-used-port-trucking-companies-labor-violations/848554001/>

²⁰ Case Nos. 201809-03597118 and 201809-03598018

²¹ *Carlos Ayala, et al. v. California Cartage Company, Inc., et al*, Case No. BC566992