

August 19, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Orion Logistics, Inc.
Attn: Legal Department
2258 W. Winton Ave.
Hayward, CA 94545

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE
SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Orion Logistics, Inc.

From: Nayeli Angeles, on behalf of herself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Nayeli Angeles (“Ms. Angeles”) to seek compensation and all other available relief, including civil penalties on her behalf and on the behalf of all those similarly aggrieved (collectively with Ms. Angeles, “Claimants”) who have been injured by Orion Logistics, Inc.’s (collectively, “Orion Logistics”) violations of the California Labor Code. Ms. Angeles, on behalf of herself and all other similarly aggrieved current and former hourly nonexempt employees of Orion Logistics, intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Orion Logistics is a third-party logistics service provider operating from the Port of Oakland and serving customers throughout California. Orion Logistics’ services include distribution, pack-and-ship, and order fulfillment.

Claimant Ms. Angeles worked for Orion Logistics as an hourly, nonexempt employee in the Production Department of Orion Logistics' warehouse distribution center in Oakland, California, earning \$17.00 per hour from approximately February 2022 through approximately June 3, 2024. Ms. Angeles, on behalf of herself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in warehousing-related tasks like order fulfillment for Orion Logistics at its distribution center. As part of their employment with Orion Logistics, Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, attending staff meetings; fulfilling orders by finding the products in the warehouse, collecting and then grouping the items by order; labeling the orders; place boxes on pallets; shrink wrap and label the pallets; cleaning the warehouse; and labeling items individual items, at Orion Logistics' distribution/warehousing facility.

Claimant Ms. Angeles regularly worked five (5) days per week for 8 hours or more hours per day. During the entire course of her employment, Orion Logistics failed to provide Ms. Angeles and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Orion Logistics has also failed to pay minimum wages to Ms. Angeles and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 7-2001. As a consequence, Orion Logistics has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 7-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Orion Logistics has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Orion Logistics has also failed to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Orion Logistics has failed and continues to fail to provide timely, accurate wage statements to Ms. Angeles and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Orion Logistics, including Ms. Angeles, Orion Logistics has violated Labor Code section 203 by failing to pay all wages due upon separation. Orion Logistics has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for cell phone expenses, in violation of Labor Code section 2802. Ms. Angeles is informed and believes that such violations are ongoing, systematic, and continuous. Ms. Angeles intends to bring an action against Orion Logistics under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

¹ Without limitation, Ms. Angeles, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,

Theories of Labor Code Violations and Remedies:

Claimant Ms. Angeles was employed by Orion Logistics from approximately February 2022 through approximately June 3, 2024 working in the Production Department. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, Orion Logistics has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Orion Logistics has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 7-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred before and after Claimants' recorded shifts as well as during their meal periods, which were never accurately recorded. Claimants were required to perform compensable work and did so to Orion Logistics' benefit. Claimants' off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Second, Defendant enforces practices that effectively require Claimants to perform work during their meal periods, the effects of which Defendant could have mitigated by adjusting customer expectations and/or by adding more staff to reduce the expected workload. However, Defendant instead chose to instruct Claimants to work through their meal periods on particularly demanding days and to not take any rest breaks. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Orion Logistics' part to provide compliant meal periods and rest breaks. With that, Orion Logistics' corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Orion Logistics' failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Orion Logistics' failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 7-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Orion Logistics failed to authorize and permit full-length meal periods for Ms. Angeles and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 7-2001. Ms. Angeles and all similarly aggrieved persons were not supposed to clock out for their meal periods—the time was auto-deducted. The problem with this noncompliance is that it masks meal periods that are taken late, after the end of the fifth hour. Ms. Angeles and Claimants regularly left to take their meal periods late, largely because of time constraints in completing all scheduled jobs during their shifts. Despite that, Orion Logistics did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Orion Logistics required Ms. Angeles and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 7-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, Orion Logistics likewise failed to authorize and permit Ms. Angeles and all other similarly aggrieved employees to take any full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of

1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

IWC Wage Order No. 7-2001. Claimants were not able to take their requisite number of 10-minutes rest breaks based on their shift duration; Ms. Angeles and Claimants regularly worked through their rest breaks. They were told that their longer meal periods (off-the-clock) were to make up for no rest breaks. Still, Orion Logistics did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 7-2001. Furthermore, since Orion Logistics required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Orion Logistics was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Ms. Angeles and Claimants regularly worked overtime hours, some on the clock and some off the clock because of the security checks described earlier. Orion Logistics has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Orion Logistics failed to provide Ms. Angeles and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Orion Logistics, including Ms. Angeles, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Ms. Angeles, did not receive all wages owed upon separation (1) for all hours worked during that immediate pay period and (2) based on Orion Logistics’ prior failings to pay all wages owed every pay period, including but not limited to meal and rest premiums wed and for all hours worked, as explained above.

Pursuant to IWC Wage Order No. 7-2001, employers are required to keep accurate time records showing when employees begin and end each work period. During the relevant time period, Orion Logistics had a company-wide policy and engaged in a companywide practice of failing to record actual hours worked, thereby failing to keep accurate records of work period start and stop times for Claimants, in violation of section 1198. More specifically, Ms. Angeles and Claimants did not record their meal periods; rather, Orion Logistics auto-deducted 30 minutes for meal periods from their total time worked. Because Orion Logistics failed to provide the actual hours worked and, therefore, the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on Claimants’ wage statements, Claimants have been prevented from verifying—solely from information on the wage statements themselves—that they were paid correctly and in full. Instead, Claimants have had to refer to other sources beyond their wage statements and reconstruct time records to determine whether in fact they were paid correctly and the extent to which they were underpaid, thereby causing them injury. Orion Logistics’ decision to fail to record this time was knowing and intentional because it was in the sole position to set forth and implement and enforce these companywide practices. Accordingly, Claimants are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)–(g).

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Orion Logistics pursuant to Labor Code section 226. First, Orion Logistics’ legal name is Orion Logistics, Inc. (with the comma), however, Claimants’ paystubs read “Orion Logistics Inc.” without the comma as the

employer name. In California there is a corporation registered as Orion Logistics Inc. without the comma, creating confusion and harm to the employee. Additionally, Ms. Angeles' paystubs are also missing the last four digits of her social security number. Second, because Orion Logistics failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Orion Logistics for all necessary, **business-related expenses** they incurred in executing their duties for Orion Logistics. California Labor Code section 2802 provides that "An employer shall indemnify her or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her or her duties, or of her or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Orion Logistics, however, has failed to fully reimburse Ms. Angeles and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses associated with the use of their personal cell phones, which Orion Logistics required Claimants to use because Claimants had to clock in and out with a certain phone application, among other reasons. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Orion Logistics' uniform failure to pay minimum and overtime wages, failure to authorize and permit full-length, off-duty meal periods and rest breaks or pay Claimants adequate premium compensation in lieu thereof, failure to keep accurate time records, failure to furnish timely and accurate wage statements, failure to reimburse all necessary, business-related expenses, and failure to pay all wages owed upon separation, violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Ms. Angeles, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Orion Logistics for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in cursive script that reads "Cheryl Kenner".

Cheryl A. Kenner