



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

P.O. Box 44000 • Olympia, Washington 98504-4000

September 22, 2025

Via E-mail and U.S. Mail

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**Re: Peter Aleksandrov
OAH Docket No. 07-2023-LI-01920
Director Order No. 2025-019-WPA**

Dear Parties:

Please find the enclosed Director's Order, which is served on the date of mailing. A copy of the Initial Order is enclosed for your convenience.

Sincerely,

Joel Sacks
Director

Enclosures

cc: Judge Dan Gerard
Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

PETER ALEKSANDROV

Appellant/Wage Claimant,

Appeal of Determination of Compliance
No. DOC-103-23

OAH Docket No. 07-2023-LI-01920

No. 2025-019-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the appeals filed by the Washington State Department of Labor & Industries and Orca Beverage, Inc. (Appellants), briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on December 18, 2024.
2. The Director received two timely filed petitions for review from the Appellants.
3. The Director adopts and incorporates the Initial Order's "Issue" and "Hearing" sections.
4. The Director modifies the Initial Order's "Order Summary" to read: Determination of Compliance No. 103-23, dated April 6, 2023, in which the Department of Labor and Industries

NO. 2025-019-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

found that Orca Beverage, Inc. did not violate the Washington Wage Payment Act or the Minimum Wage Act regarding Peter Aleksandrov during the period from February 3, 2020, through March 18, 2022, is reversed and remanded to the Department for a determination of overtime owed.

5. The Director adopts and incorporates the Initial Order's Findings of Fact 4.1 through 4.21.

6. Finding of Fact 4.22 is modified to read: In 2017, Orca fired Scott Brown.

7. The Director adopts and incorporates the Initial Order's Findings of Fact 4.23 through 4.26.

8. Finding of Fact 4.27 is modified to read: Mike Bourgeois testified that automated industrial machines all included programmable logic controllers, and they are coded and programmed the same as other computers. Bourgeois Testimony. He testified that no one at Orca other than Mr. Aleksandrov could do this. Bourgeois Testimony. However, Mr. Bourgeois admitted that he does not know precisely how programmable logic controllers work. Bourgeois Testimony.

9. Finding of Fact 4.28 is modified to read: Kara Zhang testified that Mr. Aleksandrov had robotics training. Zhang Testimony. However, the only training Mr. Aleksandrov had in robotics consisted of some informal training from Mr. Brown. Aleksandrov Testimony. Mr. Brown, on the other hand, took six robotics classes from the manufacturer, FANUC. Aleksandrov Testimony.

10. The Director adopts and incorporates the Initial Order's Findings of Fact 4.29 through 4.32.

11. Finding of Fact 4.33 is modified to read: The primary focus of Mr. Aleksandrov's employment with Orca/Gotek was plant automation. This involved both mechanical work—such as extending conveyors, replacing suction cups on robot arms, replacing rollers, and so on—and electrical work, which included building electrical panels, wiring equipment, and replacing

electrical hardware components. Mr. Aleksandrov also used programmable logic controllers to cause Orca's machines to move repetitively. This involved selecting options from a library of limited choices offered by the device's pre-programming. Mr. Aleksandrov's formal education in automation and initial exposure to programmable logic controllers came in a college program that emphasized electrical theory and motor controls. Mr. Aleksandrov's use of programmable logic controllers was in the role as a technician, not as a computer system analyst, computer programmer, software engineer, or other similarly skilled worker. And his use of these devices was only a limited aspect of his efforts to automate Orca's production line. It was not his primary duty.

12. The Director adopts and incorporates the Initial Order's Finding of Fact 4.34.

13. Finding of Fact 4.35 is modified to read: The ten-pack variety packer was developed at Lambie Engineering – finished in 2016. Aleksandrov Testimony. It was programmed entirely by Mr. Brown, the only employee with robotics training. Aleksandrov Testimony.

14. The Director adopts and incorporates the Initial Order's Findings of Fact 4.36 through 4.52.

15. Finding of Fact 4.53 is modified to read: The second instance occurred in July 2020. The 10-pack variety packing system required updating. Aleksandrov Testimony. Again, Mr. Aleksandrov relied on tech support from the machine's manufacturer. Aleksandrov Testimony.

16. Finding of Fact 4.54 is modified to read: The third instance was right before Mr. Aleksandrov left Orca. Orca reorganized its facility, moving some of its robots. Aleksandrov Testimony. Moving the robots changed their orientation, so their instructions needed to be updated. Aleksandrov Testimony. Mr. Aleksandrov again enlisted FANUC Tech Support for assistance. Aleksandrov Testimony.

17. The Director adopts and incorporates the Initial Order's Findings of Fact 4.55 through 4.57.

18. Programming robots was not Mr. Aleksandrov's primary duty at Orca/Gotek.

19. Mr. Aleksandrov's primary duty at Orca did not consist of: (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (2) the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) the design, documentation, testing, creation or modification of computer programs related to machine operation systems; or (4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

20. The Director adopts and incorporates the Initial Order's Findings of Fact 4.58 through 4.70.

21. Finding of Fact 4.22 is modified to specify when Orca fired Scott Brown and to remove the statement regarding the number of projects completed before his termination. Findings of Fact 4.27 and 4.28 are modified to reflect that they are summaries of testimony that do not resolve disputed facts. Finding of Fact 4.33 is modified for clarity and to give greater detail regarding Mr. Aleksandrov's duties at Orca. The determination that "programmable logic controllers are not computers" is removed because, given that Mr. Aleksandrov's primary duty does not meet the computer professional exemption, it is unnecessary to decide this matter. Finding of Fact 4.35 is modified to remove the statement that "[t]he robot was operated by a programmable logic controller," which is not supported by the evidence. While many machines in Orca's plant used these devices, the robots had their own programming and operating systems and were not operated by programmable logic controllers. Findings of Fact 4.53 and 4.54 are modified to correctly reflect when these events took place. Finding of Fact 4.53's reference to the robots' "programmable logic controllers" is removed to reflect that programmable logic controllers were not used to instruct these robots. In modifying these findings, the Director gives due regard to the presiding officer's opportunity to observe the witnesses. *See* RCW 34.05.446(4). None of these changes materially affected the Director's decision in this matter.

II. CONCLUSIONS OF LAW

1. Based on the Appellants' timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.

2. The Director adopts and incorporates the Initial Order's Conclusions of Law 5.1 through 5.10.

3. Conclusion of Law 5.11 is modified to read: "As remedial legislation, the [Minimum Wage Act] is given a liberal construction; exemptions from its coverage are narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation." *Becerra v. Expert Janitorial, LLC*, 176 Wn. App. 694,705 (2013), *aff'd*, 181 Wn.2d 186 (2014) (citations omitted). When interpreting remedial labor statutes, any doubts must be "resolved in favor of the worker." *Dep't of Lab. & Indus. v. Cannabis Green, LLC*, No. 102922-5, 2025 WL 1523430, at *6 (Wash. May 29, 2025) (citation omitted).

4. Mr. Aleksandrov does not meet a reasonable interpretation of the computer professional exemption. Much of his job involved maintaining, repairing, and retrofitting Orca's equipment—activities more aptly characterized as electrical and mechanical work than that of a "computer system analyst, computer programmer, software engineer, or other similarly skilled worker." *See* WAC 296-128-535(1)(a). While Aleksandrov made use of programmable logic controllers to help automate Orca's production line, this involved selecting options from a library of limited choices offered by these devices' pre-programming, essentially arranging electrical contacts in a certain order to make Orca's machines move repetitively. More importantly, the use of programmable logic controllers did not constitute Aleksandrov's primary duty. Rather, it was only a limited aspect of his work at Orca.

5. Mr. Aleksandrov's primary duty did not consist of: (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (2) the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and

related to user or system design specifications; (3) the design, documentation, testing, creation or modification of computer programs related to machine operation systems; or (4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

6. The Director adopts and incorporates the Initial Order's Conclusions of Law 5.13 through 5.14.

7. The Director does not retain jurisdiction over this appeal.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Determination of Compliance is **REVERSED AND REMANDED** to the Department for a determination of overtime wages owed. The Initial Order of December 18, 2024, is incorporated by reference herein.

DATED at Tumwater this 22nd day of September, 2025.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by emailing it to directorappeal@lni.wa.gov or by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides: "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER** was mailed on the date below to the following via regular, postage prepaid, U.S. Mail:

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Patrick Kirby
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ORCA Beverage, Inc.
11903 Cyrus Way #5
Mukilteo, WA 98275

DATED this 22nd day of September, 2025, at Tumwater, Washington.

Lisa Deck

LISA DECK

Valerio, Halcy (ATG)

From: Cartwright, Diana Sheythe (ATG)
Sent: Friday, January 17, 2025 12:38 PM
To: ATG MI LNI SEA Director Attorney
Cc: Ruha, Melanie (ATG); pkirby@pkirbylaw.com; Rubin, Jerome
Subject: FW: SERVICE: Aleksandrov, Peter - OAH Docket No. 07-2023-LI-01920 - Dept Petition for Review
Attachments: 250117_DirAppeal.pdf; 241218_InitialOrd.pdf

Dear Anastasia Sandstrom:

Please see attached the Initial Order in this case. I apologize for the oversight.

Thank you,

Diana Sheythe Cartwright

Pronouns: she/her

Senior Counsel

Seattle Section Chief, Labor & Industries Division

Phone: (206) 389-2122

Fax: (206) 464-6451

From: Goss, Amanda J. (ATG) <amanda.goss@atg.wa.gov>
Sent: Friday, January 17, 2025 12:32 PM
To: Cartwright, Diana Sheythe (ATG) <Diana.Cartwright@atg.wa.gov>
Subject: FW: SERVICE: Aleksandrov, Peter - OAH Docket No. 07-2023-LI-01920 - Dept Petition for Review

Can you please forward a copy of the initial order to ATG MI LNI SEA Director Attorney lniseadirectoratty@atg.wa.gov.
Thx

From: ATG MI LNI SEA Director Attorney <lniseadirectoratty@atg.wa.gov>
Sent: Friday, January 17, 2025 11:51 AM
To: Goss, Amanda J. (ATG) <amanda.goss@atg.wa.gov>
Subject: FW: SERVICE: Aleksandrov, Peter - OAH Docket No. 07-2023-LI-01920 - Dept Petition for Review

Dear Ms. Goss:

Please provide the initial order.

Thank you,

Anastasia Sandstrom
Counsel to the Director

From: Deck, Lisa L (LNI) <DECL235@LNI.WA.GOV> On Behalf Of LNI RE Director Appeal
Sent: Friday, January 17, 2025 9:27 AM

To: ATG MI LNI SEA Director Attorney <lniseadirectoratty@atg.wa.gov>

Subject: FW: SERVICE: Aleksandrov, Peter - OAH Docket No. 07-2023-LI-01920 - Dept Petition for Review

[EXTERNAL]

From: Ruha, Melanie (ATG) <melanie.ruha@atg.wa.gov>

Sent: Friday, January 17, 2025 9:18 AM

To: LNI RE Director Appeal <DirectorAppeal@LNI.WA.GOV>

Cc: Cartwright, Diana Sheythe (ATG) <Diana.Cartwright@atg.wa.gov>

Subject: SERVICE: Aleksandrov, Peter - OAH Docket No. 07-2023-LI-01920 - Dept Petition for Review

External Email

Please see attached for filing the Department's Petition for Review.

Thank you,

Melanie Ruha (she/her)

Paralegal

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Labor & Industries Division

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**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Peter Aleksandrov,

Appellant/Wage Claimant.

Docket No. 07-2023-LI-01920

INITIAL ORDER

Agency: Dept. of Labor and Industries

Program: Wage Payments

Agency No. DOC-103-23

1. **ISSUE:** Whether to affirm or to set aside Determination of Compliance No. 103-23, dated April 6, 2023, in which the Department of Labor and Industries found that Orca Beverage, Inc. did not violate the Washington Wage Payment Act or the Minimum Wage Act regarding Peter Aleksandrov during the period from February 3, 2020, through March 18, 2022.
2. **ORDER SUMMARY:** Determination of Compliance No. 103-23, dated April 6, 2023, in which the Department of Labor and Industries found that Orca Beverage, Inc. did not violate the Washington Wage Payment Act or the Minimum Wage Act regarding Peter Aleksandrov during the period from February 3, 2020, through March 18, 2020, should be set aside.
3. **HEARING**
 - 3.1. Hearing Dates: August 6-8, 2024
 - 3.2. Administrative Law Judge: Terry A. Schuh
 - 3.3. Appellant: Peter Aleksandrov
 - 3.3.1. Representative: Patrick K. Kirby, Attorney, Patrick J. Kirby Law Office, PLLC. Tom Kirby, Law Clerk, appeared as well.
 - 3.3.2. Witnesses:
 - 3.3.2.1. Peter Aleksandrov, Appellant / Wage Claimant.
 - 3.3.2.2. David Sands was offered as an expert witness. I declined to qualify Mr. Sands as an expert witness for this matter.
 - 3.4. Agency: Department of Labor and Industries
 - 3.4.1. Representative: Diana S. Cartwright, Senior Counsel, Office of the Attorney General
 - 3.4.2. Witnesses:
 - 3.4.2.1. Kara Zhang, Communications Director, Orca Beverage, Inc.

- 3.4.2.2. Brenda Gonzales, Industrial Relations Agent, Department of Labor and Industries
- 3.4.2.3. Michael Bourgeois, President, Orca Beverage, Inc.
- 3.5. Employer/Intervenor: Orca Beverage, Inc.
 - 3.5.1. Representatives: Jerome L. Kirby And Andrew J. Sletten, Attorneys, Williams, Kastner & Gibbs, PLLC. Kelly Olsen, Paralegal, appeared as well.
 - 3.5.2. Witnesses: Orca Beverage, Inc. declined to call witnesses.
- 3.6. Exhibits: Exhibits 1-31, and 33-36, offered by the Department of Labor and Industries, were admitted into the record as evidence. Exhibits 101-114, offered by Peter Aleksandrov, were admitted into the record as evidence. In addition, the following documents, offered by Peter Aleksandrov, were admitted into the record for impeachment purposes: Ex. 115, pp. 17, 32; Ex. 116, pp. 28, 36-37, 80-82, and 84.
- 3.7. Court Reporters: Andrea Clevenger (Aug. 6), Brittany Hemenway (Aug. 7) and Jan Marie Glaze (Aug. 8).

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. On April 6, 2023, the Department of Labor and Industries (the Department) served on Peter Aleksandrov (Mr. Aleksandrov or Aleksandrov) Determination of Compliance No. 103-23, dated April 6, 2023, in which the Department held that Mr. Aleksandrov's former employer, Orca Beverage, Inc. (Orca), did not violate the Washington State Wage Payment Act and/or the Minimum Wage Act as to Mr. Aleksandrov during the period at issue here, beginning February 3, 2020, through March 18, 2022. Ex. 1.
- 4.2. On May 5, 2023, Mr. Aleksandrov appealed that decision. Ex. 2.

Peter Aleksandrov background

- 4.3. Mr. Aleksandrov graduated from Spokane Community College with a two-year degree in Electrical Maintenance and Automation. Aleksandrov Testimony. He has no other post-high school, formal education. Aleksandrov Testimony.
- 4.4. The first year emphasized electrical theory and the second year emphasized motor controls. Aleksandrov Testimony. In the last semester, he was introduced to programmable logic controllers as a foundation for automation. Aleksandrov Testimony. He took only one course regarding programable logic

controllers – sufficient to know that they existed and what their purpose was. Aleksandrov Testimony. He learned what they could do and generally how they operated. Aleksandrov Testimony.

- 4.5. Programmable logic controllers control relays, solenoids, lights, and electrical devices. Aleksandrov Testimony. Programming them is basically arranging electrical contacts to cause a machine to operate repetitive tasks. Aleksandrov Testimony.

Lambie Engineering

- 4.6. Mr. Aleksandrov worked at Lambie Engineering (Lambie). Aleksandrov Testimony; Michael Bourgeois (Mr. Bourgeois or Bourgeois) Testimony.
- 4.7. Mr. Aleksandrov never wrote any software code at Lambie. Aleksandrov Testimony.
- 4.8. At Lambie, Mr. Aleksandrov worked with Scott Brown (Mr. Brown). Aleksandrov Testimony.
- 4.9. Lambie purchased some programable robot arms from a company called Fanuc. Aleksandrov Testimony. Programable robot arms generally come pre-programmed. Aleksandrov Testimony. However, Fanuc also trained Mr. Brown to program them. Aleksandrov Testimony. Mr. Aleksandrov received no formal training regarding how to program a robot – only some informal training from Mr. Brown. Aleksandrov Testimony.
- 4.10. In May 2015, Lambie's owner passed away, the company was closed, and everyone was laid off. Aleksandrov Testimony.

Gotek Robotics

- 4.11. Mr. Bourgeois is the founder and President of Orca. Bourgeois Testimony.
- 4.12. Orca is a beverage manufacturing company. Ex. 9, p. 3.
- 4.13. Orca employs approximately 30 people, some of which are under Mr. Bourgeois direct supervision and some are not. Bourgeois Testimony.
- 4.14. Lambie had worked on three projects for Orca, including a palletizing robot. Aleksandrov Testimony.
- 4.15. Mr. Bourgeois wanted to further automize Orca, so in July 2016 he hired Mr. Brown and Mr. Aleksandrov, who had worked for Lambie. Aleksandrov Testimony; Kara Zhang (Ms. Zhang of Zhang) Testimony; Bourgeois Testimony; Ex. 9, pp. 3-4¹. Orca provided Mr. Brown and Mr. Aleksandrov

¹ Ex. 9, pp. 3-4 is a letter Ms. Zhang wrote to the Employment Security Department in response to Mr. Aleksandrov's worker rights complaint.

space to work in Spokane, where Lambie had been located, and called its new division Gotek Robotics (Gotek). Aleksandrov Testimony; Ex. 9, pp. 3-4. Mr. Aleksandrov's job title was Lead Automation Technician. Bourgeois Testimony. Mr. Aleksandrov focused on automation and electrical matters. Ex. 9, p. 3. Mr. Brown's job title was Lead Engineer, focusing on automation and engineering. Bourgeois Testimony; Ex.9, p. 3. Mr. Brown had a mechanical engineering degree. Aleksandrov Testimony.

- 4.16. Mr. Aleksandrov spent about 80% of his time at Gotek in Spokane and about 20% at Orca in Mukilteo. Zhang Testimony; Bourgeois Testimony.
- 4.17. Gotek primarily served Orca, but also served other customers. Aleksandrov Testimony, Zhang Testimony, Bourgeois Testimony. However, after Mr. Brown left, Gotek focused only on Orca. Zhang Testimony, Bourgeois Testimony.
- 4.18. Only Mr. Brown was involved in sales by Gotek. Aleksandrov Testimony. This was because he was trained² and authorized by Fanuc to sell its robots. Aleksandrov Testimony.
- 4.19. Orca dissolved Gotek when Mr. Aleksandrov quit. Bourgeois Testimony.

Tab slitter machine

- 4.20. Gotek's first project for Orca was a tab slitter machine. Aleksandrov Testimony. The machine used grippers to pull tabs apart. Aleksandrov Testimony. The machine did not employ software. Aleksandrov Testimony. It was controlled by a programmable logic controller. Aleksandrov Testimony. Mr. Brown and Mr. Aleksandrov installed the machine at Orca's bottling plant in Mukilteo in 2017. Aleksandrov Testimony.

Lambie Gantry Robotic Packing Systems

- 4.21. The next Gotek project for Orca was a Lambie gantry packing system. Aleksandrov Testimony. Its purpose was to package animal-themed bottles. Aleksandrov Testimony. The machine did not have a robotic arm and did not employ software. Aleksandrov Testimony. It was controlled by a programmable logic controller. Aleksandrov Testimony. This machine packed 48 bottles at a time. Bourgeois Testimony. The variety of motion demonstrated by the machine required a lot of programming. Bourgeois Testimony.

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² Mr. Brown completed six courses addressing the Fanuc robotic arms, including training on programming them. Aleksandrov Testimony.

- 4.22. These were the only two projects that Mr. Aleksandrov worked on for Orca with Mr. Brown before Mr. Bourgeois fired Mr. Brown. Aleksandrov Testimony.

Mr. Aleksandrov's role at Orca

- 4.23. Mr. Bourgeois told Mr. Aleksandrov that his primary duty at Orca was to keep the plant running. Aleksandrov Testimony. The parties dispute what that meant. Mr. Aleksandrov described his primary duty as mechanical and electrical whereas Mr. Bourgeois described Mr. Aleksandrov's primary duty as automation design, creation, and programming, which he characterized as the epicenter of design and creation. With these competing distinctions in mind, I review the testimony summarized below.
- 4.24. Mr. Bourgeois strongly disputed Mr. Aleksandrov's assertion that his primary function was to maintain and repair machines. Bourgeois Testimony. Mr. Bourgeois considered Mr. Aleksandrov's primary function to be automation design and creation and the programming Mr. Aleksandrov did was the epicenter to automation design and creation. Bourgeois Testimony. Nevertheless, notably, Mr. Bourgeois does not know how much time Mr. Aleksandrov spent programming. Bourgeois Testimony.
- 4.25. Mr. Aleksandrov spent approximately 80% of his time maintaining, repairing, and retrofitting Orca's equipment. Aleksandrov Testimony. The other 20% of his time, Mr. Aleksandrov spent on Solid Ware drawing and designing replacement mechanical parts for repairing or retrofitting Orca's machines. Aleksandrov Testimony. Mr. Aleksandrov job duties included "designing, proofing, testing concepts, [programmable logic controller] programming, logic programming, robot designing, troubleshoot automation, and smart factory design work." Ex. 9, p. 3; Bourgeois Testimony.
- 4.26. Maintaining, repairing, and retrofitting Orca's equipment fell into two areas, mechanical and electrical. Aleksandrov Testimony. The electrical area included programmable logic controllers. Aleksandrov Testimony.
- 4.27. Automated industrial machines all included programmable logic controllers, and they are coded and programmed the same as other computers. Bourgeois Testimony. No one at Orca other than Mr. Aleksandrov could do this. Bourgeois Testimony. Again, notably, Mr. Bourgeois does not know precisely how programmable logic controllers work. Bourgeois Testimony.
- 4.28. Mr. Aleksandrov had robotics training. Zhang Testimony. However, the only training Mr. Aleksandrov had in robotics consisted of some informal training from Mr. Brown. Aleksandrov Testimony. Mr. Brown, on the other hand took six robotics classes from the manufacturer, Fanuc. Aleksandrov Testimony.

- 4.29. Robots depend upon programming to function. Bourgeois Testimony. However, Mr. Bourgeois does not know if the robots Orca used came with any programing already installed. Bourgeois Testimony.
- 4.30. The parties dispute whether Mr. Aleksandrov installed and programmed robots. Mr. Aleksandrov testified that he did not. Ms. Zhang testified that he did. Mr. Bourgeois testified that Mr. Aleksandrov did so because Mr. Bourgeois observed him do so. Bourgeois Testimony. Mr. Bourgeois testified that he did not know if Mr. Aleksandrov selected from choices pre-programmed into the robots but that Mr. Aleksandrov also performed coding, which Mr. Bourgeois defined as providing line-by-line instructions for the robots. Bourgeois Testimony. Mr. Bourgeois testified that he believes Ms. Aleksandrov called someone for assistance but he does not know who. Bourgeois Testimony. Mr. Bourgeois testified that Mr. Aleksandrov employed a teach pendent to program the robots. Bourgeois Testimony. Mr. Bourgeois has never used a teach pendent but he believes it to be an *interface*. Bourgeois Testimony.
- 4.31. Mr. Aleksandrov never worked on any of Orca's office computer devices. Aleksandrov Testimony; Zhang Testimony.
- 4.32. Ms. Zhang's responsibilities were communication and human resources. Zhang Testimony. She did not supervise Mr. Aleksandrov. Zhang Testimony. Mr. Aleksandrov answered to Mr. Bourgeois. Zhang Testimony; Bourgeois Testimony. Mr. Bourgeois and Mr. Aleksandrov spoke regularly, usually weekly. Bourgeois Testimony. Mr. Bourgeois was Mr. Aleksandrov's only supervisor. Bourgeois Testimony. Mr. Bourgeois gave Mr. Aleksandrov his work assignments. Bourgeois Testimony.
- 4.33. In view of the foregoing, I find that the primary focus of Mr. Aleksandrov's employment with Orca/Gotek was plant automation. That is why Mr. Bourgeois formed Gotek and hired Mr. Brown and Mr. Aleksandrov. That was the focus of Mr. Aleksandrov's efforts. To be sure, he performed pure mechanical work as well, such as extending conveyors, replacing suction cups on robot arms, replacing rollers, and so on. Nevertheless, all of that was ultimately to support automation. However, Mr. Aleksandrov's formal education in automation and initial exposure to programmable logic controllers came in a college program that emphasized electrical theory and motor controls. Furthermore, that training treated programmable logic controllers as electronic devices, not as computers. Therefore, I am persuaded that programmable logic controllers are not computers. More to the point, Mr. Aleksandrov's use of them was in the role as a technician, not as a computer programmer.

4.34. With this distinction in mind, I review some of the work Mr. Aleksandrov did.

Variety packer project

- 4.35. The ten-pack variety packer was developed at Lamie Engineering – finished in 2016. Aleksandrov Testimony. It was programed entirely by Mr. Brown, the only employee with robotics training. Aleksandrov Testimony. The robot was operated by a programmable logic controller. Aleksandrov Testimony.
- 4.36. At some point, it was placed into storage and in the process, cables were cut rather than simply disconnected. Aleksandrov Testimony. So, when the court released it to be shipped to Orca, it was in a damaged, inoperable condition. Aleksandrov Testimony. Mr. Aleksandrov had to restore its operational capacity. Aleksandrov Testimony. He had to acquire new cables so as to reconnect the machine to an electrical panel to make it operational. Aleksandrov Testimony.
- 4.37. Mr. Brown and Mr. Bourgeois conferred and determined that the variety packer needed increased speed in order to function adequately for Orca. Aleksandrov. Accordingly, Mr. Brown had to redesign the machine. Aleksandrov Testimony. Mr. Brown determined that the machine needed new end effectors with which to grip the bottles. Aleksandrov Testimony.
- 4.38. The machine was operational before Mr. Brown was terminated. Aleksandrov Testimony.
- 4.39. Only Mr. Brown had experience using the computer program Solid Works. Aleksandrov. Mr. Aleksandrov had to learn how to use that program so that he could design a new type of bottle gripper. Aleksandrov Testimony.
- 4.40. Mr. Aleksandrov used Solid Works to design parts, from idea to blueprint. Bourgeois Testimony.
- 4.41. Ultimately, the instruction for the robotic movements programmed by Mr. Brown had to be updated to direct the machine to pick up four bottles, rather than two, and to alter where the machine was to place the bottles. Aleksandrov Testimony. This did not require re-writing computer software. Aleksandrov Testimony. Nevertheless, only Mr. Brown had robotics training. Aleksandrov. Therefore, Mr. Aleksandrov relied upon the manufacturer's tech support service to instruct him how to change the machine's instructions. Aleksandrov Testimony.

Palletizing project

- 4.42. Mr. Aleksandrov's responsibilities as to palletizing were mechanical and electrical, including the use of programmable electrical controllers. Aleksandrov Testimony.

- 4.43. When directed by Mr. Brown to do so, Mr. Aleksandrov replaced suction cups on the robotics. Aleksandrov Testimony.

Conveyors

- 4.44. Mr. Aleksandrov worked at retrofitting Orca's system of conveyors. Aleksandrov Testimony.
- 4.45. Mr. Bourgeois wanted to increase Orca's efficiency. Aleksandrov Testimony. To that effect, Mr. Aleksandrov drew floor plans laying out the production system. Aleksandrov Testimony.
- 4.46. Mr. Aleksandrov constructed mechanical conveyor parts, including extensions of existing conveyors. Aleksandrov Testimony. He did not build the conveyer system. Aleksandrov Testimony.

Bottle-rinsing system

- 4.47. Mr. Aleksandrov did not design Orca's bottle-rinsing system. Aleksandrov Testimony. Orca bought the system used, already 20 to 30 years old. Aleksandrov Testimony. Mr. Aleksandrov merely extended the conveyor section to enhance the system. Aleksandrov Testimony.

Bottle-labeling system

- 4.48. Orca owned its bottle-labeling system for years before Mr. Aleksandrov worked for Orca/Gotek. Aleksandrov Testimony. All Mr. Aleksandrov did for this system were electrical repairs, and he added a sensor to automatically stop the system if needed. Aleksandrov Testimony. The sensor came from a local supplier. Aleksandrov Testimony.

Injector system

- 4.49. Mr. Bourgeois purchased an injector and instructed Mr. Aleksandrov to test it and build a prototype. Aleksandrov Testimony. Mr. Aleksandrov purchased a sensor. Aleksandrov Testimony. The sensor emits a beam of light. Aleksandrov Testimony. When the bottle breaks the beam, the injector functions. Aleksandrov Testimony; Ex. 24, p. 29. Mr. Aleksandrov purchased a small programmable logic controller by which means the sensor instructed the injector to function. Aleksandrov Testimony. The programmable logic controller was already fully programmed. Aleksandrov Testimony. All Mr. Aleksandrov had to do was set the timer. Aleksandrov Testimony.

Mr. Aleksandrov changed Mr. Brown's programming only three times

- 4.50. Mr. Brown was the only Gotek employee who programmed machines like the robotic arms. Aleksandrov Testimony. Mr. Aleksandrov was never formally trained by the manufacturer, Fanuc, or by anyone else – either before or after

Mr. Brown was fired. Aleksandrov Testimony. Mr. Brown provided limited, informal training. Aleksandrov Testimony.

- 4.51. Robots come loaded with software. Aleksandrov Testimony. The customer does not write software for the robots. Aleksandrov Testimony. The customer merely chooses from pre-programmed alternatives offered within the operating system. Aleksandrov Testimony.
- 4.52. Sometime after Mr. Bourgeois fired Mr. Brown, Orca changed to smaller boxes. Aleksandrov Testimony. Therefore, Mr. Aleksandrov needed to adjust the machine's programming. Aleksandrov Testimony. Mr. Aleksandrov did not know how to adjust the programming. Aleksandrov Testimony. He first reached out to Mr. Brown but Mr. Brown refused to help. Aleksandrov Testimony. So, Mr. Aleksandrov contacted Fanuc Tech Support for help. Aleksandrov Testimony. With their help, Mr. Aleksandrov was able to change Mr. Brown's instructions and improve the robot's performance with the new, smaller boxes. Aleksandrov Testimony.
- 4.53. The second instance occurred in July 2020. Orca reorganized its facility, moving some of its robots. Aleksandrov Testimony. Moving the robots changed their orientation, so the instructions in their programmable logic controllers needed to be updated. Aleksandrov Testimony. Mr. Aleksandrov enlisted Fanuc Tech Support for assistance. Aleksandrov Testimony.
- 4.54. The third instance was right before Mr. Aleksandrov left Orca. Aleksandrov Testimony. The 10-pack variety packing system required updating. Aleksandrov Testimony. Again, Mr. Aleksandrov relied on tech support from the machine's manufacturer. Aleksandrov Testimony.
- 4.55. On these occasions, Mr. Aleksandrov did not re-program the machine or alter the software. Aleksandrov Testimony. Rather, relying upon the manufacturer's tech support service, he made the adjustments necessary for the machine to function. Aleksandrov Testimony.
- 4.56. Mr. Bourgeois is not certain if robots came with some programming but he knows that Mr. Aleksandrov programmed robots because he observed it. Bourgeois Testimony. It is the foregoing that must have been the basis for Mr. Bourgeois' characterizing Mr. Aleksandrov's work as programming. However, if what Mr. Aleksandrov did is properly characterized as programming, it was programming accomplished by tech support through Mr. Aleksandrov, and not by Mr. Aleksandrov alone.
- 4.57. Mr. Aleksandrov has never designed software in his life. Aleksandrov Testimony.

Remote monitoring

- 4.58. Mr. Aleksandrov could access, from the Gotek office Spokane, the real time production numbers at the Orca plant in Mukilteo. Aleksandrov Testimony.
- 4.59. Mr. Aleksandrov did not design the tracking system. Aleksandrov Testimony. Mr. Bourgeois purchased it. Aleksandrov Testimony; Bourgeois Testimony. Mr. Aleksandrov installed it at Orca's plant in Mukilteo and monitored the Orca systems from Spokane. Bourgeois Testimony. Mr. Bourgeois cannot remember who installed the cameras but it was not likely that Mr. Aleksandrov did not do so because he worked in Spokane. Bourgeois Testimony. At that time, Mr. Aleksandrov watched and analyzed places where production stopped or was delayed, in an effort to improve Orca's productivity. Bourgeois Testimony. Mr. Aleksandrov told Mr. Bourgeois that the system needed a computer program and electronics that Mr. Aleksandrov could not provide. Aleksandrov Testimony.

Wage Claim

- 4.60. Mr. Aleksandrov asked Mr. Bourgeois to be paid for the overtime he worked. Bourgeois Testimony. Mr. Bourgeois denied Mr. Aleksandrov's request because Mr. Aleksandrov was overtime exempt. Bourgeois Testimony. Instead, Mr. Bourgeois allowed Mr. Aleksandrov to take time off in compensation for the overtime he worked. Bourgeois Testimony.
- 4.61. On March 31, 2022, Mr. Aleksandrov quit. Ex. 4, p. 4.
- 4.62. Aleksandrov filed a wage complaint on May 6, 2022, alleging unpaid overtime. Gonzalez Testimony; Exs. 1, 4.
- 4.63. The Department investigated. Gonzalez Testimony; Exs. 1-36.
- 4.64. The investigation was assigned to Ms. Gonzalez on May 10, 2022. Gonzalez Testimony; Ex. 3, p. 1.
- 4.65. The predominant issue was whether Mr. Aleksandrov was exempt from overtime as a professional. Gonzalez Testimony. . Ms. Gonzalez communicated with the parties regarding this issue. Gonzalez Testimony; Exs. 10-16.
- 4.66. Initially, Ms. Gonzalez determined that Mr. Aleksandrov was not a Learned Professional and issued a final demand letter to Orca for wages owed. Gonzalez Testimony; Exs. 22-23.
- 4.67. However, Orca's attorney disputed the decision, arguing that not only did Mr. Aleksandrov satisfy the exemption as a Learned Professional but he also

satisfied the exemption as a Computer Professional. Gonzalez Testimony; Ex. 24.

- 4.68. Ms. Gonzalez offered Mr. Aleksandrov an opportunity to respond. Gonzalez Testimony; Ex. 26.
- 4.69. Mr. Aleksandrov responded that he has not a computer professional but, rather, an automation technician. Gonzalez Testimony; Ex. 3, pp. 44-45.
- 4.70. Ultimately, Ms. Gonzalez found the Orca's evidence and argument more persuasive and the recommended the Department determine that Mr. Aleksandrov was a computer professional exempt from overtime. Gonzalez Testimony; Ex. 29. Therefore, the Department determined that Orca did not violate the Washington Wage Payment Act or the Minimum Wage Act. Gonzalez Testimony; Ex. 1. Thus, the Department issued a Determination of Compliance. Gonzalez Testimony; Ex. 1.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction to hear and decide this matter under Revised Code of Washington (RCW) 49.48.084, Washington Administrative Code (WAC) 296-128-800, Chapter 34.05 RCW, and Chapter 10-08-WAC.

Burden/standard of proof

- 5.2. "An employer bears the burden of proving its employee falls within an exempted category of the Act." *Clawson v. Grays Harbor Coll. Dist. No. 2*, 148 Wn.2d 528, 540 (2003).

The Determination of Compliance should be set aside

- 5.3. The wage complaint at issue here was Mr. Aleksandrov's complaint for unpaid overtime wages. The Department held that Mr. Aleksandrov was over-time exempt because he was a computer professional.
- 5.4. Employees are entitled to overtime for a workweek longer than 40 hours. RCW 49.46.130(1).
- 5.5. However, "[a]n employee does not include a person employed in a bona fide professional capacity." RCW 49.46.010(3).

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- 5.6. A computer professional as defined in WAC 296-128-535(1) is considered an person employed in a bona fide professional capacity as contemplated by RCW 49.46.010. WAC 296-128-535.³
- 5.7. Therefore, if Mr. Aleksandrov was employed by Orce/Gotek as a computer professional, and meets the earnings threshold, he is not entitled to overtime.
- 5.8. A *computer professional* is defined in WAC 296-128-535(1). Essentially, to satisfy the computer professional exemption, Mr. Aleksandrov's primary duty must be as a skilled worker, similar to a computer system analyst, computer programmer, and/or software engineer, who analyzes hardware, software, or system functional specifications and/or designs, develops, documents, analyzes, creates, tests, or modifies computer systems.
- 5.9. Moreover, excepted from the foregoing definition are "[e]mployees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs . . . , but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in WAC 296-128-535(1)(a)." WAC 296-128-535(2)(b).
- 5.10. "'Primary duty' means the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Because the burden of proving an exception to the definition of 'employee' falls on the employer claiming the exception, the burden falls on the employer to demonstrate that the employees meet the primary duty requirement." WAC 296-128-505.
- 5.11. "As remedial legislation, the [Minimum Wage Act] is given a liberal construction; exemptions from its coverage are narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation." *Becerra v. Expert Janitorial, LLC*, 176 Wn.App. 694,705 (2013), *aff'd*, 181 Wn.2d 186 (2014) (citations omitted).
- 5.12. Here, Mr. Aleksandrov's primary duty is maintaining and improving upon the integrity of Orca's production line generally, and its automation characteristics in particular. That production line is not a computer system. Rather, it is an industrial system that relies upon computers – if one generously considers programmable logic controllers to constitute computers – to instruct the functions of individual machines that comprise the industrial system. Notably, there is no singular computer program or system that controls the entire production line. Mr. Aleksandrov did not design the computer programs, nor

³ There is also a wage level requirement. However, that element is not disputed here.

did he modify them. Rather, at most, he selected from the choices and parameters offered by the computer programs to instruct the operation of the relevant machine. Further, in circumstances when doing so required particular sophistication, he relied upon technical support from the manufacturer. To be sure, he used a computer software program to design replacement parts for certain of Orca's robots and other production related devices. However, his use of that program was to facilitate his responsibility to assure smooth production as a mechanic – nothing more. Accordingly, Mr. Aleksandrov did not function as a computer professional as described in WAC 296-128-535(1) and, in fact, most closely fits the exception to computer professional provided in WAC 296-128-535(2)(b). This is so because, although in the course of his duties for Orca Mr. Aleksandrov was arguably dependent upon the use of computers and computer software programs, he was not "primarily engaged in computers systems analysis and programing".

5.13. Thus, I hold that Orca has failed to meet its burden to establish that Mr. Aleksandrov is exempt from overtime as a computer professional.

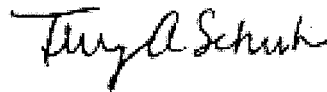
5.14. Accordingly, Determination of Compliance No. 103-23, dated April 6, 2023, should be set aside.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Department of Labor and Industries action is **SET ASIDE**.
- 6.2. Determination of Compliance No. 103-23 is **SET ASIDE**.

Issued from Olympia, Washington on the date of mailing.



Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

APPEAL RIGHTS

NOTICE OF APPEAL RIGHTS

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries.⁴ You may e-mail your Petition for Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Review, the Director *must actually* receive the Petition for Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Review to the other parties at the same time.

If the Director does not receive a Petition for Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.⁵

If you timely file a Petition for Review, the Director will conduct an administrative review under chapter 34.05 RCW.

⁴ RCW 49.48.084 and RCW 34.05.464.

⁵ RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2023-LI-01920

I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by email.

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Date: Wednesday, December 18, 2024 OFFICE OF ADMINISTRATIVE HEARINGS



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