



**WORKER RIGHTS
CONSORTIUM**



WORKER RIGHTS CONSORTIUM ASSESSMENT KONFFETTY S.A. DE C.V. (EL SALVADOR)

FINDINGS, RECOMMENDATIONS, AND STATUS September 17, 2018

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I. Executive Summary

The Licensee and the Complaint of Worker Rights Violations

The following is a report of the findings and recommendations of the Worker Rights Consortium's ("WRC's") investigation of violations of labor law and university codes of conduct against a group of workers involved in the production of collegiate apparel for Konffetty S.A. de C.V. ("Konffetty"), a garment factory located in Apopa, El Salvador. Konffetty is the sole disclosed supplier of collegiate apparel to the university licensee, Vive La Fete ("VLF"), a Miami, Florida-based company that markets children's clothing, including garments that bear university logos.¹ VLF and Konffetty are private companies that were established by members of the same Salvadoran family and, although VLF has claimed they are now entirely separate businesses, they appear to maintain significant elements of shared management and assets.

In early 2017, the WRC initiated an investigation in response to a complaint received from the Salvadoran women's rights organization, Mujeres Transformando, charging violations of the rights of women who work from their homes embroidering designs, some of which are university logos and mascots, that are sewn into garments supplied by Konffetty to VLF ("homeworkers"). Konffetty has used homeworkers to embroider apparel sold by VLF reportedly since at least 2011.

Until 2016, the homeworkers report being employed directly by Konffetty. Currently, they are employed to do the same work for Konffetty by a labor subcontractor called Recursos Humanos de Latinoamérica ("RHLA"), which has significant elements of overlapping corporate control with Konffetty.² The homeworkers are paid by RHLA for their embroidery on garments sold by VLF according to piece rates set by Konffetty (in different amounts paid for each piece of embroidery that they complete).

Findings of Violations of University Codes of Conduct and Salvadoran Labor Laws

The WRC's investigation found a number of severe violations of Salvadoran law and university codes of conduct with respect to the homeworkers' working conditions and treatment. As detailed in this report, the areas where the WRC identified violations of these standards include, but are not limited to, the following:

¹ Examples of the hand-embroidered university logo apparel produced by the homeworkers are available on the Vive La Fete website, <https://www.vivelifete.com>.

² A majority of the board members of RHLA are also members of the corporate board of Konffetty. As discussed further in this report, VLF claims that, because Konffetty and RHLA have required the homeworkers to sign contracts termed "agreements for provision of mercantile services," the homeworkers are not actually employees at all and, therefore, that their working conditions are not governed by Salvadoran labor law. Under Salvadoran law, however, as under U.S. labor law, employment status is determined by the actual circumstances of the relationship between the firm and the workers and not just by the label it is given by the firm. In this case, the circumstances clearly show that the homeworkers are and were employed by RHLA and Konffetty, respectively. Indeed, according to a Salvadoran labor expert consulted by the WRC, Konffetty and RHLA's misclassification of the homeworkers through the guise of a "mercantile services" contract violates Salvadoran law – just as misclassification of workers in the U.S. as "independent contractors" rather than employees violates the labor laws of this country. *See discussion, infra*, at 17-19.

- **Misclassification of employment status** – requiring homeworkers to sign fraudulent contracts which purport to exempt Konffetty and RHLA from any requirement to treat them in a manner that complies with Salvadoran labor law, and, relatedly, failure to register homeworkers with the Salvadoran Ministry of Labor;
- **Failure to pay minimum wages** – paying homeworkers for embroidery work at piece rates so low as to provide workers with, on average, little more than one third of El Salvador’s \$1.23 per hour minimum wage; also, failure to compensate homeworkers at all for hours that they are required to wait to be paid and to receive new assignments or even to inform homeworkers in advance how much they will be paid for this work;
- **Excessive and unpaid overtime** – assigning embroidery work to homeworkers in quantities that often require them to perform more than twice the maximum number of overtime hours permitted under university codes of conduct and failing to compensate homeworkers for these extra hours at legally required overtime rates;
- **Underpayment of annual bonuses** – failure to provide homeworkers with annual bonuses in the amounts required under Salvadoran law;
- **Failure to provide legally required benefits, paid leave, and work materials** – denying homeworkers and their families healthcare coverage and retirement benefits by failing to enroll and make contributions for homeworkers into El Salvador’s public healthcare and pension programs, and failing to provide homeworkers with statutory paid annual leave and with the materials needed to perform their work assignments;
- **Violations of freedom of association** – issuing explicit threats of and actually inflicting loss of work and employment in response to homeworkers joining with the women’s rights organization, Mujeres Transformando, to educate themselves concerning their labor rights and submit a complaint concerning violations of these rights by Konffetty and RHLA to the WRC.



Figure 1: Texas Christian University Horned Frogs logos embroidered by homeworkers for Vive la Fete.

Recommendations for Corrective Action

In order to correct the violations listed above, the WRC is recommending to VLF and Konffetty that they ensure the implementation of the following remedial measures with respect to the homeworkers:

- **Issuance of legitimate employment contracts and registration of employees** – offering homeworkers contracts which acknowledge their status as employees guaranteed the rights and benefits required under Salvadoran law and registering homeworkers with the country’s labor ministry;
- **Legally required minimum wages, benefits, and work materials** – setting the piece rates for paying the homeworkers at levels that compensate them at not less than the legal minimum wage, including, for workers’ assigned tasks that require overtime, the mandatory premium rates; enrolling and making contributions for homeworkers in El Salvador’s public healthcare and pension systems; and providing homeworkers with the materials necessary to complete their work assignments.
- **Non-excessive overtime hours** – limiting the homeworkers’ embroidery assignments to quantities that can be completed within the working hours permitted under university codes of conduct (i.e., 12 hours of overtime per week);
- **Compensation for past underpayments** – providing homeworkers with monetary compensation equal to the amounts that they have been underpaid relative to the pay they would have received if Konffetty and RHLA had complied with minimum wage and overtime laws and provided legally required annual bonuses and paid leave, plus the contributions Konffetty and RHLA would have been required to submit for the homeworkers to El Salvador’s public healthcare program and pension funds. As discussed in the body of this report, the WRC has calculated that the average amount of compensation due to each homemaker to remedy these underpayments is \$8,310.³



Figure 2: Auburn University Tigers logos embroidered by homeworkers for Vive la Fete.

- **Restoring freedom of association** – issuing a statement to homeworkers committing Konffetty and RHLA to non-retaliation for workers’ exercise of associational rights, including, specifically, workers’ associating and lodging a complaint with Mujeres Transformando and the WRC; also, resuming work assignments and paying compensation for two homeworkers who were discriminatorily discharged and any other workers who experienced retaliatory reductions in their work assignments.

³ This figure for average total compensation due per worker includes: \$4,150 for underpayment of wages for ordinary working hours (see, p. 29), \$2,430 for to underpayment of wages for overtime hours, \$187 for time spent waiting for collection of completed work and distribution of work assignments (see, pp. 34), \$134 for underpayment of annual bonuses (see, p. 36), \$1,170 for nonpayment of employer contributions to El Salvador’s public healthcare and pension systems (see, p. 39), and \$239 for failure to provide paid annual leave (see, p. 43).

Licensee and Supplier Responses

When the WRC – responding to a labor rights complaint received from the Salvadoran women’s organization, Mujeres Transformando – first contacted Konffetty in April 2017 and requested information concerning the factory’s use of homeworkers, Konffetty responded to the WRC that it did not employ homeworkers and therefore did not have any reason to respond to the WRC’s inquiry. Although, as discussed, while both Konffetty and VLF inaccurately claim that the homeworkers are not actually employees, this response was disingenuous and misleading. As VLF subsequently acknowledged, Konffetty has long had homeworkers perform embroidery work on its products, including on college logo apparel.

Despite Konffetty’s refusal to cooperate with this inquiry, the WRC continued investigating the factory’s use of the homeworkers in its production process and the latter’s working conditions and treatment. In August 2017, the WRC shared the findings of this investigation with Konffetty. In response to the WRC’s communication to Konffetty, the WRC was contacted by a U.S.-based law firm representing VLF. In its written communication to the WRC, VLF committed to “fully investigate and remedy any violations.”⁴

Following this initial communication, the WRC and VLF’s legal counsel held a series of telephone conversations to discuss the WRC’s findings and recommendations for remedial action and VLF’s responses. Over a period of several months, VLF made some limited commitments regarding corrective actions, which are discussed in this report. However, as also discussed below, in each of the areas of noncompliance the WRC had identified, the corrective actions that VLF was willing to require Konffetty to take fell far short of the measures required to achieve compliance with university codes of conduct.

Despite this, the WRC scheduled an in-person meeting with VLF, to be held in May 2018, in an attempt to reach agreement on a comprehensive corrective action plan to resolve the violations of university codes of conduct that the WRC had identified with regard to the use of homeworkers in VLF’s supply chain. The WRC informed VLF that, as the scheduled meeting with VLF would fall after the WRC’s spring annual meeting with WRC affiliate universities, the WRC would be reporting on the case at the latter meeting to the schools in attendance.

However, three days before the scheduled meeting with VLF, the company’s legal counsel notified the WRC that, due to VLF and Konffetty’s unhappiness over the WRC’s reporting on the case to universities, VLF was no longer willing to participate in the meeting and Konffetty was now unwilling to implement even those limited corrective actions that it previously had promised to take.⁵ The WRC then informed VLF that the WRC would proceed to prepare and publish a full report to universities on the violations of university codes of conduct that the WRC had identified with respect to Konffetty’s use of the homeworkers to embroider VLF’s products, including college logo apparel.

⁴ Letter from Sandler, Travis & Rosenberg, P.A. to the WRC on behalf of VLF (June 13, 2018) (on file with the WRC).

⁵ Letter from Sandler, Travis & Rosenberg, P.A. to the WRC on behalf of VLF (May 17, 2018) (on file with the WRC).

Current Status

In June 2018, VLF announced to the WRC that, due to what VLF termed the “impossibility” of implementing the corrective actions recommended by the WRC to remedy the violations of the homeworkers’ rights under university codes of conduct and Salvadoran law, Konffetty had decided that, beginning in 2019, it would cease its use of homeworkers to produce VLF’s college logo products altogether.⁶ It is important to note that the “impossible” requirements to which VLF refers are payment to the homeworkers of legal minimum wage and provision of legally required health and retirement benefits, both of which are standard requirements of university codes of conduct.

Although VLF denied that this announcement constituted a threat of retribution against the homeworkers,⁷ the clear implication was that the homeworkers would lose a source of work and income as a direct result of their reporting the violation of their labor rights to the WRC and the WRC’s seeking corrective action. The WRC communicated to VLF that this announcement constituted a retaliatory threat against the homeworkers that further violated university codes of conduct. The WRC has received no further information from VLF and, in particular, no indication that the threat to eliminate this source of income for the homeworkers has been withdrawn.



Figure 1: University of Georgia Bulldogs logos embroidered by homeworkers for Vive la Fete.

Conclusion

The body of this report discusses in detail the methodology of the WRC’s investigation of labor conditions for homeworkers in VLF’s supply chain, the specific findings of this investigation, recommendations for the remedial actions necessary in order to correct the violations of Salvadoran law and university codes of conduct that these findings identified, VLF’s response to these findings and recommendations, and the status of these violations at the present time.

Both the violations of university codes of conduct in this case – particularly in the area of underpayment of wages – and the resistance to remedying these violations that the WRC has encountered on the part of VLF and Konffetty are some of the most severe that the WRC has found to date in the production of university-licensed apparel. This case is particularly notable in that, not only have workers involved in producing collegiate apparel been paid wages that

⁶ Sandler, Travis & Rosenberg, (June 13, 2018), *supra*, n. 4.

⁷ *Id.*

represent only a small fraction of what they were legally owed, but also that the university licensee and supplier factory involved have attempted to deny that these workers are even subject to the country's labor laws at all.

The WRC does not recall any prior instance in which either of these elements was found with respect to any other university licensee and supplier. As a result, it is all the more important that this licensee and its supplier reverse their current path of intransigence and bring their operations into compliance with university labor standards in a manner that fully protects the rights and welfare of the workers involved. Therefore, it will be crucial going forward for VLF and Konffetty to cooperate with the WRC and with Mujeres Transformando, as an advocate for the rights of homeworkers in El Salvador, to develop a detailed and binding remediation plan.

The WRC believes that successful remediation of past violations of, and effective ongoing compliance with, university codes of conduct is achievable in this case assuming good faith and a meaningful commitment by VLF and Konffetty. The WRC has found no evidence to indicate that achieving these goals requires Konffetty to cease or reduce its use of homeworkers for its embroidery work – indeed, as discussed, such action by Konffetty in response to the WRC's findings and recommendations for corrective action would constitute a further violation of workers' rights. The WRC therefore reiterates the recommendation that VLF and Konffetty, instead, work constructively with the WRC and Mujeres Transformando on the development and implementation of a corrective action plan.

II. Methodology

The findings outlined in this report are based in significant part on in-depth offsite interviews with 19 homeworkers who currently embroider garments supplied by Konffetty to VLF or who have previously performed this work, all of whom were women, and the majority of whom have been employed in this capacity for more than five years. The interviewees ranged in age from 26 to 43 years old, and, like most homeworkers in the Salvadoran garment sector, live in rural communities.⁸

Through these interviews, data was gathered on 78 specific embroidery assignments which these homeworkers had completed for Konffetty-VLF, including, for each assignment, the amount paid by Konffetty-RHLA for each piece of embroidery, and the number of hours of work required to complete each of these pieces. Based on this data, the WRC was able to calculate the pay homeworkers received for completing each piece of embroidery, expressed as an hourly wage rate.⁹

To validate these findings, the WRC also interviewed homeworkers concerning their daily and weekly working schedules, and calculated the number of hours each employee reported working

⁸ Ingrid Palacios, "El Salvador: Las Cicatrices de las Bordadoras a Domicilio" *Revista Pueblos* (June 23, 2016), <http://www.revistapueblos.org/blog/2016/06/23/el-salvador-las-cicatrices-de-las-bordadoras-a-domicilio/>. The author is affiliated with the Salvadoran women's rights organization, Mujeres Transformando, which submitted the complaint concerning the working conditions of homeworkers embroidering for Konffetty to the WRC.

⁹ For example, where a homemaker reported that completing a piece of embroidery for which she was paid \$2.00 required her to work for five hours, the worker was paid the equivalent of \$0.40 per hour for this assignment.

on a weekly basis performing embroidery work for Konffetty-RHLA. By comparing the number of hours that homeworkers reported working on a weekly basis with the weekly pay that they received, the WRC obtained an alternative measurement of homeworkers' hourly wages with which to crosscheck the hourly wage rates derived from the piece rate data.

In addition, the WRC reviewed the following sources of evidence in reaching the findings and recommendations contained in this report:

- Written communications and telephone calls with attorneys at Sandler, Travis & Rosenberg, P.A., the Washington, DC law firm representing VLF;
- Relevant documents, including contracts signed with homeworkers by Konffetty and RHLA, and Salvadoran income tax documents filed by Konffetty and RHLA on behalf of homeworkers; and
- Salvadoran and international labor laws, including an analysis of the legal obligations of Salvadoran companies with respect to the use of homeworkers prepared for the WRC by a Salvadoran professor of labor law who also practices as a private attorney representing employers in that country.

III. Findings and Recommendations for Corrective Action

A. Factual Background and Applicable Standards

1. Factory Ownership and Licensee Responsibility

The licensee, VLF, is a family-owned business. According to VLF's attorneys, the company's current owner is a businessman and former prominent Salvadoran politician named Miguel Lacayo. In 1990, however, an article in the *New York Times* identified Miguel Lacayo's sister, Karla Lacayo, as VLF's owner at that time.¹⁰

Karla Lacayo is also listed in the Salvadoran government's Commercial Registry as having been, in 1986, one of the founding board members of Konffetty.¹¹ Miguel Lacayo, the current owner of VLF, was listed as Konffetty's legal representative at the time Konffetty was established in 1990 (at which time Karla Lacayo was identified as the owner of VLF), and served on the board of Konffetty until 2011.¹²

VLF claimed to the WRC that, while initially both companies were owned by the Lacayo family, VLF is now entirely separate from Konffetty, with no shared ownership or control, and Konffetty

¹⁰ Deborah Hoffman, "Fashion; Easter Isn't Just for the Bunny Rabbit," *New York Times* (March 25, 1990), <https://www.nytimes.com/1990/03/25/style/fashion-easter-isn-t-just-for-the-bunny-rabbit.html>.

¹¹ Salvadoran Commercial Registry, Document Number 277430, Book 516, Page 115 (July 3, 1986).

¹² Maryelos Cea, "Minec: Es 'difícil' detectar empresas con bordadoras a domicilio," *El Mundo* (Aug. 20, 2018), <http://elmundo.sv/minec-es-dificil-detectar-empresas-con-bordadoras-a-domicilio/>.

now functions simply as an “unrelated supplier” to VLF.¹³ The WRC invited VLF to provide documentation to substantiate this claim, but did not receive any such evidence in response. VLF also asserted that the homeworkers have “no direct relationship” with Konffetty and that their only relationship is with Konffetty’s labor subcontractor, RHLA.¹⁴

Under university codes of conduct, the particulars of such contracting and subcontracting relationships do not alter VLF’s responsibility for the treatment of the homeworkers who embroider its products. University codes of conduct clearly establish the obligation of licensees to ensure that labor conditions for workers in their supply chains for the manufacturing of collegiate goods comply with universities’ labor standards.¹⁵ This obligation is binding on licensees regardless of whether these workers’ employment relationship is with the licensee, itself, a third-party supplier factory, or a subcontractor to that supplier.¹⁶

It is noteworthy, however, that the WRC’s investigation found that VLF, Konffetty, and RHLA, despite claims to the contrary, continue to share common elements of ownership and management. First, although VLF has been a university licensee for nearly a decade, Konffetty is the only factory that VLF has ever identified to universities’ licensing agencies as a supplier for its college logo products.¹⁷ The reverse is also true: VLF is the only university licensee to have ever disclosed Konffetty as a supplier factory (and, moreover, to the WRC’s knowledge, the only apparel company, collegiate or non-collegiate, to do so).¹⁸

Furthermore, the trade names, “Vive La Fete” and “VLF,” as well as two of the labels under which VLF sells children’s garments in the U.S., “Caramelo” and “Silly Goose,” are registered in El Salvador as the intellectual property of Konffetty.¹⁹ This is, of course, the exact reverse of the approach taken by buyers whose suppliers actually *are* independent entities – which explicitly retain exclusive rights in the intellectual property of their brands.

Data provided by VLF to the university licensing agent, IMG College Licensing, state that the representative of VLF is Ana Rodriguez. Ms. Rodriguez is also the general manager of Konffetty.²⁰ Indeed, when, in August 2017, the WRC wrote to Rodriguez as Konffetty’s general

¹³ Sandler, Travis & Rosenberg, (June 13, 2018), *supra*, n. 4.

¹⁴ Sandler, Travis & Rosenberg, (May 17, 2018), *supra*, n. 5.

¹⁵ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, Schedule I §§ I and II (“[T]he following Labor Code Standards (the “Code”) ... require[] that all Licensees, at a minimum, adhere to the principles set forth in the Code.... Licensees agree to operate work places and contract with companies whose work places adhere to the standards and practices described below.”).

¹⁶ *Id.* at § I (“The term ‘Licensee’ shall for purposes of the Code, and unless otherwise specified in the Code, encompass all of Licensee’ contractors, subcontractors or manufacturers which produce, assemble or package finished Licensed Articles for the consumer.”).

¹⁷ WRC, Factory Database Search, <https://www.workersrights.org/factory-database-search>.

¹⁸ *Id.* More than 40 major brands producing non-collegiate apparel, including many of the leading brands exporting from El Salvador, publicly disclose lists of factories in their global supply chains. While more than 60 export garment factories in El Salvador appear on these brands’ supplier lists, Konffetty is not among them. Human Rights Watch, *Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry* (April 20, 2018), <https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry>.

¹⁹ Vive La Fete company website, <https://www.vivelafete.com>.

²⁰ WRC, Factory Database Search, *supra*, n. 17.

manager concerning the factory's use of homeworkers, the sole response that the WRC received was from a U.S. law firm representing VLF. Such evidence of shared intellectual property, shared personnel, and combined operations significantly undermine the credibility of VLF's claim that it is entirely separate from Konffetty as a business.

Evidence of a similar interrelationship exists between Konffetty and the labor subcontractor which contracts with the homeworkers, RHLA. Salvadoran Commercial Registry filings indicate that a majority of RHLA's board members, including its president, also sit on the board of Konffetty – where they make up half of Konffetty's current board.²¹ Additionally, the person who served as RHLA's legal representative at the time of its incorporation is also a member of the corporate board of Konffetty.²²

As mentioned above, under university codes of conduct, the degree to which shared management or ownership exists among VLF, Konffetty, and RHLA has no bearing on VLF's responsibility for ensuring that the labor conditions for workers who produce the apparel supplied to it by Konffetty are consistent with university labor standards. By virtue of having disclosed Konffetty as its supplier of collegiate licensed goods and Konffetty having retained RHLA as a labor subcontractor, VLF has the obligation to ensure that all these parties have been and are complying with university codes of conduct.²³ Moreover, the extensive evidence of shared ownership and management severely undermines the credibility of any claim by VLF that it lacks influence with Konffetty and RHLA to effect remediation of violations of these standards.

2. Requirements for the Use of Homeworkers under Salvadoran Law and University Codes of Conduct

Unlike the labor laws of the United States, which, with limited exception, generally prohibit homework in garment manufacturing,²⁴ the legal system in El Salvador allows for the use of homeworkers in the garment industry. Under Salvadoran law, homework is permitted in garment manufacturing, but is regulated to ensure that homeworkers are guaranteed the same legal protections as other workers, including the right to minimum wages and social benefits.²⁵

University codes of conduct, likewise, permit the use of industrial homework in the production of collegiate apparel unless prohibited by the laws of the country of manufacture. Universities'

²¹ Salvadoran Commercial Registry, Document Number 461-463 (August 19, 2016).

²² Salvadoran Commercial Registry, Document Number 14842561 (March 22, 2013).

²³ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, *supra*, n. 15, Schedule I §§ I and II.

²⁴ 29 U.S. Code of Federal Regulations (C.F.R.), §530.2 Restriction of homework ("Except as provided in subpart B of this part, no work in the industries defined in paragraphs (e) through (k) of §530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless"). U.S. employers in industries where federal labor law does permit homework, however, are required to pay homeworkers in compliance with the same federal wage-and-hour laws that apply to other employees, including homeworkers who are paid on a piece rate basis. 29 C.F.R. §530.202(b) ("The fact that an employer bases [its] piece rates on work measurements which indicate that the homeworkers would receive at least the minimum wage at such piece rate(s) does not relieve the employer from the [Fair Labor Standards] Act's requirement that *each* homeworker actually receive not less than the minimum wage for all hours worked." (emphasis in original)).

²⁵ Constitution of El Salvador, Article 41; Labor Code of El Salvador, Articles 71-75.

codes require that their licensees, including VLF, ensure that conditions for workers involved in the manufacture of collegiate licensed apparel comply with the labor laws of the country where these garments are produced, including requirements to pay legal minimum wages and statutory benefits.²⁶ Because these codes explicitly extend this obligation of licensees to the conditions of workers employed not only by the licensees and their direct suppliers, but also to any subcontractors of those suppliers,²⁷ this requirement applies to homeworkers as well.

a. Requirements for Use of Homeworkers under Salvadoran Law

i. Requirements under El Salvador's Constitution and Labor Code

El Salvador's Constitution mandates that homeworkers have legal rights that are equivalent to those of other workers, including the rights to a legally established minimum wage and protection from unjustified loss of wages:

The homeworker has the right to an officially designated minimum wage, and to the payment of indemnification for time lost by motive of an employer's delay in ordering or receiving work or for the arbitrary or unjustified suspension of work. Homeworkers shall be recognized as having an analogous legal situation as other workers, taking into consideration the special characteristics of their work.²⁸

The Salvadoran Labor Code further establishes the status of homeworkers as a category of worker protected by the labor laws and whose conditions are subject to the same legal protections as those of other workers. Article 71 of the Labor Code defines "[h]omeworkers" as "those [workers] who make articles in their home or in another place of their free choosing, without the immediate oversight or direction of the employer or its representative, for which the employer provides part or all of the necessary materials."²⁹

The same chapter of the Salvadoran Labor Code establishes specific requirements for the use of homeworkers. These include, but are not limited to, the following requirements on the part of the company:

- To register the name and address of its homeworkers, along with the work assigned to them and the wage rates they are paid, with the Ministry of Labor (Labor Code Article 72);

²⁶ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, Schedule I § II.A, *supra*, n. 15, ("Licensee must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.").

²⁷ *Id.* at Schedule I § I ("The term 'Licensee' shall for purposes of the Code, and unless otherwise specified in the Code, encompass all of Licensee's contractors, subcontractors or manufacturers which produce, assemble or package finished Licensed Articles for the consumer.").

²⁸ Constitution of El Salvador, Article 41. Quotations from Salvadoran legal sources and news articles and from WRC interviews with homeworkers that are cited in this document have been translated from Spanish to English by the WRC.

²⁹ Labor Code of El Salvador, Article 71.

- To provide to the homeworkers the tools and materials required for them to perform their work (Article 73(b));
- To post the rates of pay it will provide for homework at the location where work materials are distributed and finished products are collected (Article 73(a)); and
- To pay the homeworkers no less than other workers who carry out the same or similar work in a non-homework setting (Articles 75 and 415) – i.e., no less than the legal minimum wage.

In November 2017, the Supreme Court of El Salvador issued a decision reaffirming that the Labor Code had established the obligation for companies to pay homeworkers, at minimum, the same wages paid to other workers for the same work. The wage paid to homeworkers, the court stated, must be “a previously agreed upon fixed remuneration (Labor Code Article 73 (c)), which, in no case, should be less than that which is received by other workers who carry out the same or similar work in a determined rubric (Labor Code Articles 75 and 415).”³⁰

The Supreme Court also made clear that both the Labor Code and El Salvador’s Constitution require that this wage rate must be, in any case, no less than the country’s legal minimum wage for workers in the same industrial sector. “According to Articles 38 (1) and the last sentence of Article 41 of the Constitution, and Articles 75 and 415 of the Labor Code,” the Court declared, “the minimum wage for homeworkers can, in no case, be less than that [minimum wage] which is earned by workers at the same company or establishment or for the same economic activity undertaking the same or similar work.”³¹

Significantly, the Court explicitly affirmed that its position was based on the general principle established under the Constitution that the requirement to pay the legal minimum wage applies to *all* workers performing paid labor, including homeworkers. The Court emphasized that “[the] minimum wage ... is applicable to all sectors, which means that no worker, independent of the area in which he or she works, can be excluded from the application of minimum wage. ... [It] is a fundamental human right recognized for all workers by the Constitution.”³²

³⁰ Supreme Court of Justice of El Salvador, Constitutional Court, File No. 49-2015 (November 8, 2017).

³¹ *Id.* The Court’s decision faulted the executive branch of the Salvadoran government for having failed to explicitly define specific minimum wage rates for homeworkers in each sector and directs the government to accomplish this. VLF asserted in a communication to the WRC in June 2018 that proposals submitted to the Salvadoran Legislative Assembly, following the Court’s ruling, to set such a specific wage rate for homeworkers showed that until such legislation is ratified, there is no obligation on employers in El Salvador to pay homeworkers the legal minimum wage. Letter from Sandler, Travis & Rosenberg, P.A., June 13, 2018, *supra*, n. 4. However, the Supreme Court made clear in its decision that, contrary to VLF’s assertion, the obligation under the Labor Code and Constitution for companies to pay homeworkers the minimum wage for their industrial sector applied even in the absence of such a specific standard being set by the government. “In any case, whereas a new executive decree establishing the minimum wage [for homeworkers] has not [yet] been approved by the President of the Republic, homeworkers will earn a minimum wage that corresponds to the rubric or economic activity for which they carry out their work.” Supreme Court of Justice of El Salvador, Constitutional Court, File No. 49-2015.

³² *Id.* As noted, U.S. labor law takes the same approach with respect to the obligations of employers in industries where homework is legally permitted, i.e., employers are required to pay homeworkers, including those paid on a piece rate basis, the same federal minimum wage that applies to other employees. See, 29 C.F.R. § 530.202(b).

ii. Requirements under El Salvador's Social Security and Pension Laws

El Salvador's Law on Social Security requires employers to enroll all workers in the Salvadoran Institute of Social Security ("ISSS"), the country's public healthcare system. Employers of homeworkers are not exempted from this requirement. The Salvadoran Law on Social Security, which establishes and regulates the ISSS, states, "Obligatory Social Security is applied to all workers who depend upon an employer, no matter what type of labor relationship binds them together or the way in which payment has been established."³³

Similarly, El Salvador's Law of the Pensions Savings System requires all employers to enroll their employees in a government-approved pension fund.³⁴ The Salvadoran pension law states that all workers who "enter into work in a relationship of labor subordination [i.e., employment]" should be enrolled into the pension fund of their choice.³⁵ Again, the law creates no exemptions from this responsibility for employers of workers who perform their job duties in their homes.

b. Requirements for Use of Homeworkers under University Codes of Conduct

University codes of conduct set labor standards that licensees are required to adhere to in their supply chains for the manufacturing of collegiate licensed apparel. University codes explicitly state that the licensee assumes responsibility for adherence to these labor standards by "all of Licensee's contractors, subcontractors or manufacturers which produce, assemble or package finished Licensed Articles for the consumer."³⁶ University codes of conduct therefore obligate a licensee, such as VLF, to ensure compliance with the codes' labor standards by any subcontractor, such as RHLA, that employs workers, including employees who are homeworkers, to produce collegiate licensed goods – as the homeworkers in this case do for VLF's supplier factory, Konffetty.

University codes of conduct make clear that licensees are responsible for ensuring that their suppliers and subcontractors comply with the local laws of the country where production of collegiate goods takes place, including, specifically, laws requiring payment of minimum wage and provision of statutory benefits.³⁷ As discussed in the previous section, in the context of El Salvador's legal system, the responsibility to ensure compliance with the law encompasses the obligation to ensure that both suppliers and subcontractors provide their workers – including homeworkers – with wage rates that are no lower than the legal minimum and to enroll and make contributions for these workers into the country's social security and pension systems.

University codes of conduct also specifically affirm this particular obligation, as they also state explicitly that licensees must ensure that their suppliers and subcontractors "pay employees, as a floor, at least the minimum wage required by local law or the local prevailing industry wage,

³³ Salvadoran Law on Social Security, Decree No. 1263 (1997), Article 3.

³⁴ Salvadoran Law of the Pension Savings System, as amended, Decree No. 787 (2017).

³⁵ *Id.*, Article 7.

³⁶ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, *supra.*, n. 15, Schedule I § I.

³⁷ *Id.* at §§ IIA and B.

whichever is higher, and shall provide legally mandated benefits.”³⁸ As a result, under university codes of conduct, VLF, as a university licensee, is and has been responsible for ensuring that the homeworkers employed in its supply chain for collegiate apparel, whether previously when they worked directly for Konffetty, or currently while working for Konffetty’s subcontractor, RHLA, are paid no less than the Salvadoran legal minimum wage and are enrolled in the country’s social security and pension systems.

3. Use and Employment of Homeworkers by Vive la Fete, Konffetty, and RHLA

When the WRC – responding to a complaint received from the Salvadoran women’s organization, Mujeres Transformando – first contacted Konffetty in April 2017 and requested information concerning the factory’s use of homeworkers, Konffetty responded to the WRC that it did not employ homeworkers and therefore did not have any reason to respond to the WRC’s inquiry. This response was misleading and, as VLF subsequently acknowledged, the Konffetty factory uses homeworkers to perform embroidery work on its products. According to both Salvadoran government labor inspectors and independent investigative journalists, companies like Konffetty, that use homeworkers to embroider garments, often conceal or deny this practice, in part, to avoid enrolling and paying contributions for the homeworkers in the country’s public healthcare and pension programs.³⁹



Figure 2: Images of robots embroidered by homeworkers for Vive la Fete.

Homeworkers interviewed by the WRC testified that they have done embroidery work for Konffetty and, more recently, the factory’s labor contractor, RHLA, for many years, with one worker reporting having done this work from her home for nearly a decade. These workers primarily live in communities located in agricultural areas outside of the capital city of San Salvador, where opportunities for paid formal sector employment are limited.

The homeworkers described to the WRC how they receive assignments for, complete in their homes, submit, and are paid for embroidery work for Konffetty. Homeworkers reported that, in some cases, Konffetty had actively recruited and trained women in their communities to do

³⁸ Id. at §§ IIB.

³⁹ See, Maryelos Cea, “Minec: Es ‘difícil’ detectar empresas con bordadoras a domicilio,” *El Mundo* (August 20, 2018) (“The companies hide from the authorities the existence of embroiderers at home, confirms Jorge Bolaños, Director of Inspections of the Ministry of Labor. These women do not have a written contract and are not registered with the Salvadoran Social Security Institute (ISSS) or the Pension Fund Administrators (AFP)’ (The company) [not Konffetty] is the main one of Panchimalco, one of the strongest,” said Guadalupe, who began embroidering at age 12. ‘They deliver material [to homeworkers] Monday, Wednesday and Friday. They are still working. It is a great falsehood that they say [to journalists], that they do not have [homeworker] embroiderers,’ she insisted.”), <http://elmundo.sv/minec-es-dificil-detectar-empresas-con-bordadoras-a-domicilio/>.

embroidery work in their homes for the company. One worker told the WRC “[Our] mayor’s office ... told us about a job fair at the community center ... [where] women had come ... [who] told us that they were from Konffetty and that is how the [homeworking] group started ... [with] 100 women who, for three months, received classes on how to embroider at the [local] community center.”

Homeworkers reported that they travel to designated meeting places on appointed days and times, where they submit pieces that they have embroidered, receive payment for these pieces, and receive new work assignments for additional pieces. Workers identified these meeting places as including locations in the communities of Cojutepeque, Santa Cruz Michapa, and Tenancingo, all in the department⁴⁰ of Cuscatlán, a largely agricultural area known for the cultivation of coffee, fruit, sugar, and tobacco, as well as in Los Planes, a more urbanized community on the outskirts of San Salvador. Some workers reported travelling for several hours to these meeting locations from their homes in more rural districts.

Homeworkers testified that, on a designated day of the week and at a given time, they arrive at these sites to meet with a woman named Jenny who, from 2011 until around 2016, identified herself as representing Konffetty but currently identifies herself as a representative of RHLA (hereinafter “the Konffetty-RHLA representative”⁴¹). According to workers, Jenny sets the days and times for these meetings, inspects, and accepts – or, not infrequently, rejects and returns for reworking – the embroidery pieces that the workers have completed and distributes new embroidery assignments to the workers to be completed during the following week. Jenny is accompanied at the distribution site by a man named Wilfredo (“Will” or “Willy”), who pays each of the workers in cash for the completed pieces that Jenny has accepted.

Homeworkers testified that, when they arrive at the designated meeting place, they form a queue with anywhere from eight to 50 workers and wait to meet individually with the Konffetty-RHLA representatives, Jenny and Wilfredo, in the order of the workers’ arrival. On some days, at some of the meeting places, some workers arrive to meet with Jenny and Wilfredo at a designated time in the morning and other workers arrive to meet with Jenny and Wilfredo at the same location in the afternoon.

After the Konffetty-RHLA representative, Jenny, inspects their completed embroidery, each of the workers then meets with Jenny again to receive new embroidery assignments, along with the cloth and thread with which this work is to be completed (although, as discussed further below, the amount of thread provided is sometimes insufficient to complete the assignment).

One homeworker described Konffetty-RHLA’s system of collection, inspection, payment for, and distribution of embroidery work as follows:

⁴⁰ A “Department” is El Salvador’s governmental equivalent of a province or state.

⁴¹ As the homeworkers were previously contracted by Konffetty to do embroidery work on garments supplied to VLF are currently contracted by RHLA to do the same work for Konffetty under the same conditions and under the same supervision, and as the two companies have significantly overlapping control, the two companies are referred to jointly in this report as Konffetty-RHLA. The relationships among VLF, Konffetty, and RHLA are discussed, *supra*, at 8-9.

We show up and wait for Jenny to call us, in order of our arrival. First, we turn in the work that is done. She reviews it and then after she finishes going through all of the work to receive, then Willy starts to pay and she hands out new work. That is always how it has worked.

Workers' estimates of the numbers of homeworkers who submit completed embroidery and receive payment for this work and new embroidery assignments from the Konffetty-RHLA representatives have varied over time. Workers report that the meeting places and times where the work is distributed, collected, and paid for have shifted in some cases and that the numbers of workers meeting with the company representatives at each location have also changed. However, workers' estimates indicate that, since 2016, as many as 300 homeworkers may have performed embroidery work for Konffetty-RHLA on garments supplied to VLF.

From when they first began receiving embroidery assignments up until the present, workers have understood that the embroidery that they perform is exclusively for embellishment of garments produced by Konffetty. Homeworkers described and showed the WRC examples of the embroidery work they performed. These include designs featuring university logos and mascots (*See Figures 1-3*), as well as many other images (*See, e.g., Figure 4*), which are consistent with those appearing on garments offered for sale on VLF's website.⁴²

B. Violations of Salvadoran Law and University Codes of Conduct

1. Terms of Employment

a. Misclassification of Homeworkers' Employment Status

i. Findings

The WRC's investigation found that Konffetty and its labor subcontractor, RHLA, have deliberately sought to avoid obligations to the homeworkers under Salvadoran law—which, as discussed, include the requirements to pay homeworkers the legal minimum wage and to enroll and make contributions for homeworkers in the country's social security and pension systems. Konffetty-RHLA has done this, in part, misclassifying the homeworkers as so-called “mercantile providers of services” (i.e., independent contractors) rather than as employees. As discussed below, however, under Salvadoran law, as under the labor law system in the United States, simply signing a contract with a worker which purports to establish an independent contractor relationship does not permit a company to avoid its legal responsibilities when, in reality, the nature of the relationship is one of employer to employee.

Homeworkers reported that, prior to 2016, upon starting to perform embroidery work for Konffetty, they were required to sign written contracts with this company. Starting in 2016,

⁴² For example, compare Figure 1 with Vive la Fete, “TCU Jumper and Blouse,” <https://www.vivelafete.com/products/tcu-jumper-blouse-ntcu01jbl>; and Figure 2 with Vive la Fete, “Auburn Embroidered Girl's Knit Top,” <https://www.vivelafete.com/collections/collegiate/products/auburn-embroidered-girls-knit-top-nau02aetg>.

homeworkers were required to sign new contracts with Konffetty's labor subcontractor, RHLA. In both cases, these contracts stated that the relationship between the homemaker and Konffetty or RHLA was a "mercantile contract for the provision of services" rather than an employment relationship.

Under Salvadoran law, however, as under U.S. labor laws, whether or not an employer - employee relationship exists between a worker and a company depends not on the formal title given to the relationship, but, instead, on the actual facts of the worker's situation vis a vis the company. In El Salvador, this principle is known as the "primacy of reality" and is recognized in the country's Labor Code, which states, "The existence of *an individual employment contract is presumed* by the fact that one person offers services to another for *more than two consecutive days*."⁴³ (Emphasis added.) In the case of the homeworkers doing embroidery for Konffetty-RHLA, most of the workers interviewed by the WRC have been embroidering for these companies for *more than five years*, so, according to the law, an employment relationship must be presumed.

The Labor Code also makes clear that the decisive factor in finding an employment relationship in a contract between an individual and a company is the individual's status as a worker who provides labor in return for payment, not how the relationship is formally described. The law states:

Whoever offers a service or executes an act will be called a worker; whoever receives and remunerates, the boss or employer. The nature of the employment contract is not lost [... and] all of the rules of this [Labor] Code are applicable to these contracts as long as one of the parties has the characteristics of a worker.⁴⁴

This type of relationship is readily apparent in the dealings between the homeworkers and Konffetty-RHLA, as the homeworkers perform the act of embroidering cloth and these companies receive the embroidered cloth and provide remuneration.

The WRC consulted with a Salvadoran professor of labor law who also practices as an attorney representing employers in El Salvador. He observed that, based on the evidence gathered by the WRC, the homeworkers embroidering for Konffetty-RHLA possess all of the "characteristics of ... worker(s)" that, under Salvadoran law, establish an employee-employer relationship. These include:

- The homeworkers provide solely their labor, rather than any commercial or professional services to Konffetty-RHLA;
- The homeworkers are paid at piece rates that are set unilaterally by Konffetty-RHLA, rather than being subject to negotiation by the homeworkers;

⁴³ Labor Code, Article 20.

⁴⁴ Id., Article 17(2).

- The homeworkers are economically dependent on Konffetty-RHLA for their subsistence;
- The homeworkers follow directions set by Konffetty-RHLA with regard to the work they perform and the date by which they complete it; and
- The designs and materials provided to the homeworkers do not, at any time, belong to the homeworkers, but rather to Konffetty.

As a result, the legal expert concluded, under Salvadoran law, that the Konffetty-RHLA homeworkers are to be considered employees and due all of the law's protections for their working conditions.⁴⁵

Furthermore, the legal expert stated, Konffetty-RHLA's attempt to conceal this employment relationship with the homeworkers and thereby avoid their obligations to these workers under El Salvador's labor, social security, and pension laws by making use of a so-called "mercantile contract for the provision of services" constitutes a form of unlawful fraud in violation of the country's Civil Code. By extension, therefore, this practice would also represent a violation of university codes of conduct, which require Konffetty and its subcontractor, RHLA, to comply with the laws of El Salvador.⁴⁶

ii. Recommendations for Corrective Action

The WRC recommends that, to ensure compliance with Salvadoran law and university codes of conduct, VLF require Konffetty and RHLA to issue individual contracts to the homeworkers that make clear that the relationship between the parties is one of employer to employee and acknowledge the company's obligations as an employer of homeworkers under El Salvador's Constitution and Labor Code.

iii. Response of Licensee and Current Status

VLF has asserted that, as a result of the formal language in the contracts the homeworkers were required to sign with Konffetty and RHLA, these workers are not and have never been employed by either Konffetty or RHLA, but instead are "mercantile ... provi[ders] of services." As a result, VLF claims, the homeworkers who make its collegiate licensed goods and other products are not entitled to any of the protections afforded to workers under Salvadoran law.

VLF's stated position, therefore, is that as a sole result of this language in the homeworkers' contracts neither Konffetty nor Konffetty's labor subcontractor, RHLA, is or has been required to pay the homeworkers a legal minimum wage. Moreover, VLF claims, based on this rationale, that neither Konffetty nor RHLA have or had any obligation to enroll or pay contributions for the homeworkers in El Salvador's social security and pension systems or to register the homeworkers with the country's labor ministry.

⁴⁵ Legal Opinion Letter, July 5, 2018 (copy on file at WRC).

⁴⁶ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, *supra*, n. 15, Schedule I § II.

For the reasons discussed above, VLF's position is not consistent with Salvadoran labor law, which states that the existence of an employment relationship is established by actual facts of the workers' situation vis a vis the company, not how this relationship is formally titled in a contract. As already discussed (and is further apparent from the treatment of these workers by Konffetty and RHLA, which is detailed in the remainder of this report), the actual and legal nature of this relationship is one of employees to an employer, not one of independent contractors to a separate firm.

VLF continues to assert that the homeworkers are not employees under Salvadoran law and, therefore, that the protections of the country's labor laws do not apply to these workers. As noted, the WRC recommends that the homeworkers be issued contracts that acknowledge their actual status as employees of Konffetty-RHLA.

b. Failure to Provide Work Materials and Equipment

i. Findings

El Salvador's Labor Code specifically requires that an employer of homeworkers "provide the materials and tools of the work [that the homeworkers are contracted to perform]."⁴⁷ Homeworkers who do embroidery work for Konffetty-RHLA report that, when issuing homeworkers their embroidery assignments, the Konffetty-RHLA representative, Jenny, also gives them embroidery thread and patterns for the pieces that she assigns to them.

Homeworkers stated, however, that, on some occasions, the Konffetty-RHLA representative, Jenny, does not provide sufficient amounts of thread or copies of the patterns necessary to complete these assignments. Moreover, workers told the WRC, Konffetty-RHLA rarely gives them the tools they need to do this work – such as scissors or needles.

Workers stated the following with regard to Konffetty-RHLA's failure to provide them with the necessary tools and sufficient materials to complete their embroidery assignments:

- "Sometimes the ... embroidery thread that is provided is not enough to complete the designs [that the worker is assigned to embroider]. . . . If I look at the design and know that I will need more thread, I ask Jenny if she can give me a little more thread[,] ... [but usually] [s]he will say that she can't give [me] any extra thread."
- "The company doesn't provide us with needles or scissors, [so] we have to buy these things with our own money."
- "Jenny only provides the thread and cloth inserts [on which the workers embroider] ... [and] one copy of the pattern for the whole group [of homeworkers at a given meeting place] and we have to take it [the pattern] to make a photocopy without her knowing what we are doing, because she ... has told us [that] we're not allowed to make copies."

⁴⁷ Labor Code of El Salvador, Article 73(b).

- “[Jenny] just gives us one copy [of the design] for the whole group [of homeworkers at a given location] and we have to make [more] copies [of it]”
- “Sometimes she [Jenny] would get mad because I didn’t have all of the [assignments] finished. I hadn’t finished them because I didn’t have enough [embroidery] thread and I would ask for more. ... [Jenny] would tell me that she didn’t have any more [thread] and I should figure out how to make it ... with thread [that I had] from other [embroidery] projects. At the beginning I didn’t say anything and sometimes I would cry.”

Konffetty-RHLA’s failure to provide the homeworkers with sufficient materials and tools to perform the work that the company assigns violates Salvadoran law and, by extension, university codes of conduct.

ii. Recommendations for Corrective Action

The WRC recommends that VLF require Konffetty-RHLA to provide the homeworkers with:

- Sufficient materials (cloth and thread) and tools (copies of patterns, needles and scissors) needed to complete the work that they are assigned; and
- Compensation for the out-of-pocket expenses they have incurred for materials and tools as a result of the Konffetty-RHLA’s prior failure to consistently and adequately provide these to the workers.⁴⁸

iii. Response of Licensee and Current Status

As discussed, VLF has asserted generally that the homeworkers who make its collegiate licensed goods and other products are not employees of either its supplier Konffetty or Konffetty’s subcontractor, RHLA, (or any other company), and therefore are not due any of the protections afforded to workers under Salvadoran law. The WRC has concluded that this assertion is fraudulent and legally incorrect, that the homeworkers are employees of Konffetty-RHLA, and that both Salvadoran law and university codes of conduct require that their working conditions comply with Salvadoran law, including with respect to provision of materials and work tools.

In response to the WRC’s findings, VLF did report that Konffetty would begin taking steps to ensure that sufficient materials and equipment would be provided to the homeworkers, including periodic unannounced audits at the meeting places where embroidery work is assigned to them to review the materials that are being distributed by the Konffetty-RHLA representative. Workers

⁴⁸ El Salvador’s Labor Code establishes that the statute of limitations for claims by workers for incurred costs is 60 days, but is suspended when a claim is raised with the employer for payment. Labor Code, Articles 611 and 618. In the case of the compensation owed to homeworkers by Konffetty-RHLA for failure to provide sufficient materials and tools, the relevant period for which compensation must be paid began 60 days prior to when the WRC first informed Konffetty-RHLA of this violation and will end when Konffetty-RHLA consistently provides homeworkers with sufficient tools and materials. As the WRC first informed Konffetty-RHLA of this violation on August 16, 2017, the relevant period for compensation began on June 17, 2017 and currently extends to the present date.

interviewed by the WRC subsequent to these commitments being made did report improvements with regard to provision of materials and tools – including needles and scissors, both which had not previously been supplied to them. The WRC recommends that these improvements be maintained – so that each homeworker is provided with sufficient thread, needles, and scissors, and copies of the patterns needed to complete their respective embroidery assignments – and that Konffetty-RHLA reimburse workers for past out-of-pocket costs incurred as a result of prior noncompliance.

2. Wages and Hours

a. Failure to Pay the Legal Minimum Wage

i. Findings

As discussed above, El Salvador’s Constitution and Labor Code require that homeworkers be paid no less than the legal minimum wage applicable to other workers in the industrial sector in which the homeworkers are employed.⁴⁹ The current minimum wage for workers in the garment and textile industry in El Salvador is \$9.84 per day, which is equivalent to an hourly wage of \$1.23 per hour.⁵⁰

As previously noted, the homeworkers employed by Konffetty-RHLA are paid according to piece rates – i.e., in amounts that are paid to each individual worker for each piece of embroidery that the worker completes. For example, workers reported that they were paid \$2.00 per piece to embroider a University of Georgia logo with the letter, “G,” and an image of a Bulldog (*Figure 3*) and \$2.75 to embroider a piece with two Auburn University Tiger images (*Figure 2*). These piece rates for embroidery work appear to be within the general range of those paid to other homeworkers in the same geographic area, according to a survey of 80 homeworkers in the Department of Cuscatlán, who were working for various employers, which was published in 2015 by the women’s rights group, Mujeres Transformando.⁵¹

Compliance with minimum wage laws, of course, requires that an employer consider not only the price it pays a worker for completion of a particular assignment, but also the amount of time required for the worker to complete it. Therefore, employers using a piece rate system must set the amount paid per piece at a level that permits the worker to earn an hourly rate equivalent to the legal minimum wage in the amount of time required to complete the piece.⁵² For example, as the current minimum wage in El Salvador is \$1.23 per hour, in order to comply with the law, the

⁴⁹ Constitution of El Salvador, Article 41; also, Supreme Court of Justice of El Salvador, Constitutional Court, File Number 49-2015, *supra*, n. 31.

⁵⁰ Government of El Salvador, *Decreto Ejecutivo Numero 8, Diario Oficial 240, Tomo 417: Tarifa de Salario Mínimo para Maquila Textil y Confección* (December 22, 2017), <http://www.mtps.gob.sv/avisos/salarios-minimos-2018/>.

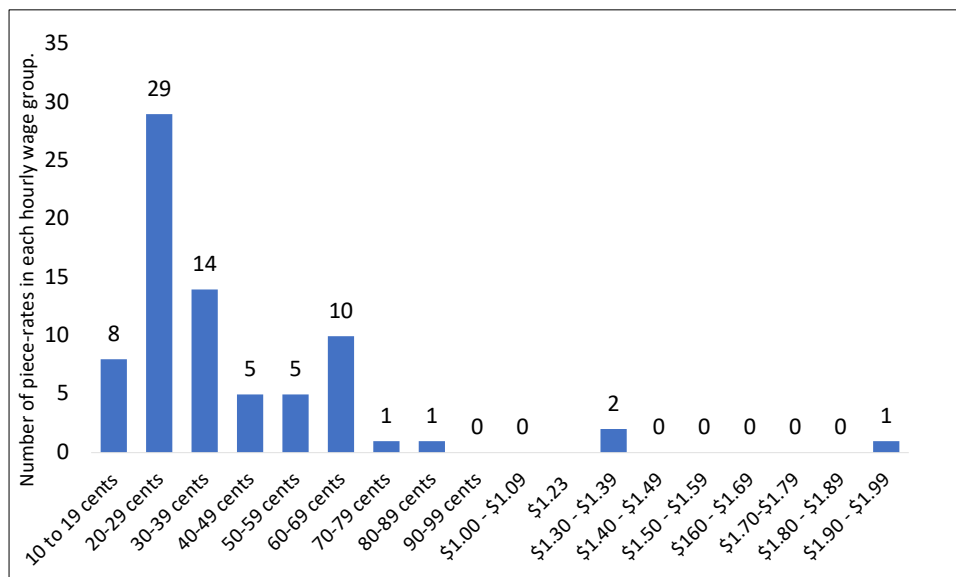
⁵¹ Mujeres Transformando, *Hecho a Mano: bordadoras a domicilio, un análisis desde la Economía Feminista* (January 2015) at 28 (citing a range of \$1.25 to \$3.50 for piece rates for embroidery work as reported in a survey of 80 homeworkers in the Department of Cuscatlán).

⁵² See, e.g., Labor Code, Articles 122 (“Salary will be freely stipulated; but it will not be less than the minimum set by the mechanisms established in this Code.”) and 147 (“For piecework or work performed for a set price or a set period of time, it is obligatory for the employer to ensure the minimum wage for the workday.”).

employer is required to pay at least \$2.46 for a piece that requires two hours for a homeworker to complete ($\$1.23 \times 2$) and at least \$3.69 for a piece that requires three hours for a homeworker to complete ($\$1.23 \times 3$).

Taking into account the time required for workers to complete the respective pieces of embroidery, nearly all of the piece rates that homeworkers reported receiving from Konffetty-RHLA for their embroidery fell below—often drastically below—the amounts required to comply with the legal minimum wage. The WRC gathered specific testimony from individual workers regarding the amounts they were paid by Konffetty-RHLA for completing specific pieces of embroidery and the number of hours required for the worker to complete the respective pieces.

The WRC gathered 78 specific examples of completed job assignments, including the amount paid per piece, the number of hours required to complete the piece, and the resulting hourly wage rates. These examples are shown on the graph below and the table on the following page (*See Graph 1 and Table 1*). In 75 out of these 78 cases (96% of cases), the hourly wage represented by the amount paid to the homeworker for the time required to complete the piece is below the legal minimum of \$1.23 per hour.



Graph 1: Hourly wages based on piece rates and hours required for completion

As noted, in only three of these 78 examples was the piece rate sufficient to yield hourly wages that comply with the legal minimum of \$1.23 per hour (*See Table 1: Examples 2, 21, and 29*). In the majority of cases, piece rates were so low that the resulting hourly rate *represents less than 25% of the legal minimum wage* (\$.30 per hour or lower) (*See Table 1: Examples 1, 5, 8-12, 17-18, 20, 24, 33, 37-38, 41-44, 51-61, 54, 64, 67-71, 74-78*).

Example	Piece rate paid	Number of hours to complete	Hourly rate	Example	Piece rate paid	Number of hours to complete	Hourly rate
1	\$1.25	9	\$0.14	40	\$2.00	4	\$0.50
2	\$1.30	1	\$1.30	41	\$2.20	8	\$0.28
3	\$1.45	4.5	\$0.32	42	\$2.25	8	\$0.28
4	\$1.50	2	\$0.75	43	\$2.25	8	\$0.28
5	\$1.50	10	\$0.15	44	\$2.25	10	\$0.23
6	\$1.60	3	\$0.53	45	\$2.25	6	\$0.38
7	\$1.60	2	\$0.80	46	\$2.25	5	\$0.45
8	\$1.60	15	\$0.11	47	\$2.27	6	\$0.38
9	\$1.60	8	\$0.20	48	\$2.27	6	\$0.38
10	\$1.70	8	\$0.21	49	\$2.35	7	\$0.34
11	\$1.70	7	\$0.24	50	\$2.40	7	\$0.34
12	\$1.75	7	\$0.25	51	\$2.40	10	\$0.24
13	\$1.80	4	\$0.45	52	\$2.40	10	\$0.24
14	\$1.80	3	\$0.60	53	\$2.40	16	\$0.15
15	\$1.80	5	\$0.36	54	\$2.40	16	\$0.15
16	\$1.80	5	\$0.36	55	\$2.40	12	\$0.20
17	\$1.80	8	\$0.23	56	\$2.40	8	\$0.30
18	\$1.80	8	\$0.23	57	\$2.45	12	\$0.20
19	\$1.80	3.5	\$0.51	58	\$2.45	12	\$0.20
20	\$1.90	8	\$0.24	59	\$2.50	10	\$0.25
21	\$1.90	1	\$1.90	60	\$2.50	12	\$0.21
22	\$1.90	3	\$0.63	61	\$2.50	20	\$0.13
23	\$1.90	6	\$0.32	62	\$2.50	6	\$0.42
24	\$2.00	9	\$0.22	63	\$2.50	4	\$0.63
25	\$2.00	3	\$0.67	64	\$2.50	19	\$0.13
26	\$2.00	3	\$0.67	65	\$2.50	8	\$0.31
27	\$2.00	3	\$0.67	66	\$2.75	6	\$0.46
28	\$2.00	2.5	\$0.80	67	\$2.80	10	\$0.28
29	\$2.00	1.5	\$1.33	68	\$2.80	10	\$0.28
30	\$2.00	6	\$0.33	69	\$2.80	14	\$0.20
31	\$2.00	3	\$0.67	70	\$2.95	10	\$0.30
32	\$2.00	4	\$0.50	71	\$2.95	12	\$0.25
33	\$2.00	8	\$0.25	72	\$3.00	5	\$0.60
34	\$2.00	6	\$0.33	73	\$3.00	5	\$0.60
35	\$2.00	4	\$0.50	74	\$3.00	25	\$0.12
36	\$2.00	3	\$0.67	75	\$3.00	12	\$0.25
37	\$2.00	10	\$0.20	76	\$3.00	16	\$0.19
38	\$2.00	8	\$0.25	77	\$3.50	13	\$0.27
39	\$2.00	5	\$0.40	78	\$3.50	16	\$0.22

Table 1: Piece rates, hours required for completion and hourly wage rates

As can be seen from the graph and table above, the number of hours required to complete pieces varied, even, in some cases, where the piece rates paid for them were the same, reflecting imprecision in Konfetty's setting of piece rates, variations in workers' speed, or a combination of both factors. Overall, the average hourly rate yielded by the data gathered from workers was *\$0.41 per hour – one-third of the applicable legal minimum wage.*

In order to triangulate these wage rate findings (e.g., validate the data through use of alternative methodology), the WRC also measured the hourly wage rate the homeworkers received by interviewing them concerning their daily working schedules, calculating the average number of hours each homemaker reported spending each week working for Konffetty-RHLA, and comparing this figure with the average weekly amount of pay that homeworkers reported receiving. As discussed below, these calculations produced another measure of the homeworkers' average hourly wage rate – one that was quite consistent with the average hourly wage that the WRC arrived at from the data concerning the piece rates homeworkers received and the number of hours they worked to complete specific pieces of embroidery.

Due to economic need, the extremely low pay rates provided by Konffetty-RHLA, and the scarcity of better-paid alternatives in the rural areas where they live, many homeworkers reported spending very long hours every week doing embroidery for the companies. On average, the homeworkers whom the WRC interviewed reported spending 70 hours per week embroidering for Konffetty-RHLA.

Not surprisingly, since the homeworkers must balance the time they spend doing embroidery in their homes with their domestic responsibilities, the numbers of daily and working hours reported varied significantly among the homeworkers the WRC interviewed. However, none of the homeworkers interviewed reported spending fewer than 40 hours per week doing this work. These figures were generally consistent with the working hours reported by other homeworkers in same region of El Salvador, the majority of whom, according to Mujeres Transformando's 2015 study, reported working 10 or more hours per day.⁵³

Comparing the average number of hours that each Konffetty-RHLA homemaker interviewed reported spending doing embroidery each week with the average weekly pay that the homeworkers reported receiving from Konffetty-RHLA for the pieces of embroidery they completed and returned yielded an average pay rate for the homeworkers of \$0.45 per hour – only 37% of the legal minimum of \$1.23 per hour.

Significantly, this hourly rate is within 10% of the average hourly rate resulting from comparing the piece rates homeworkers reported receiving for specific pieces of embroidery with the respective numbers of hours that the homeworkers indicated were required to complete those pieces. The general consistency of the figures that result from both sets of data for measuring the homeworkers' working times and compensation suggests that \$0.45 is a fairly accurate estimate of the average hourly wage rate the homeworkers are and have been paid by Konffetty-RHLA for embroidering products for VLF.⁵⁴

⁵³ *Hecho a Mano*, *supra*, n. 51 at 32.

⁵⁴ Since Salvadoran law establishes the obligation to pay a minimum wage in reference to periods of time worked by the employee (per month, week, etc.), the WRC considers the homeworkers' testimony concerning the pay they receive for working a given number of hours on a weekly basis to provide a more appropriate basis for calculating their average hourly wage rate than the workers' testimony concerning the pay they receive for completing specific pieces of embroidery.

As noted, homeworkers explained to the WRC that they performed this embroidery work, despite the exceedingly low wages that Konffetty-RHLA pays because of a lack of better-paying opportunities in the rural areas where they live – especially opportunities that would allow them to remain at home with their families, avoid commuting to a job in the city, and alternate paid work with carrying out domestic responsibilities.⁵⁵ Indeed, the wages that the homeworkers embroidering for Konffetty reported receiving on average were more than double the median wages reported by homeworkers, generally, in the same geographic area, according to the 2015 study by Mujeres Transformando.⁵⁶

However, neither the fact that performing homework has certain advantages for workers, nor the fact that Konffetty-RHLA may be paying their homeworkers significantly more, on average, than other Salvadoran employers do obviates the obligation of Konffetty-RHLA to compensate their homeworkers at rates that comply with the legally-established minimum wage. Moreover, the fact that *some* homeworkers are able to achieve hourly wage rates that, based on the piece rates they report receiving for some of their embroidery work and the numbers of hours they indicate are required to complete these assignments, are significantly higher than the wage rates other homeworkers receive (and, vice versa, that some workers report wage rates that are significantly lower than average), should not obscure the overall reality that *all* of the homeworkers interviewed by the WRC were being paid at rates lower than the legal minimum.

It is inevitable that, in any group, some workers, for various reasons, are able to complete a given task more quickly than others. Piece rate systems are intended, in part, to provide incentives to more capable employees to work as quickly as possible. The purpose of minimum wage laws, however, is to ensure that all workers employed by firms in a given industrial sector or geographic jurisdiction are paid for their time and labor – no matter how slowly or quickly it is performed – at no less than a basic minimum wage rate. An employer with a cohort of workers, of whom some work more slowly than others, has the option of providing its slower workers with additional training and/or incentives – or, consistent with statutory and contractual requirements, choosing to discontinue employing them.

An employer does *not* have the option, however, of simply paying its slower workers – much less *all* of its workers (as Konffetty-RHLA has done) – at wage rates below the legal minimum. The WRC finds that Konffetty-RHLA's longstanding practice of paying homeworkers for embroidery at piece rates that result in wages far below the legal minimum constitute a gross violation by the employer of Salvadoran law and, by extension, a serious violation by the licensee, VLF, of university codes of conduct.

⁵⁵ For example, one homeworker reported that the other paid textile work available for her to do in her home (*deshilar tela*, a handicraft where cloth is decorated by removing threads in a pattern) provided her with roughly the same income as doing embroidery work for Konffetty – \$2.50 for six hours of work.

⁵⁶ *Hecho a Mano*, *supra*, n. 51 at 27 (citing a median monthly wage for 80 homeworkers surveyed in the Department of Cuscatlán of \$58). The average monthly wage reported by homeworkers working for Konffetty-RHLA is \$136. However, the average monthly wage reported by Konffetty-RHLA homeworkers was still less than the *maximum* monthly wage reported by homeworkers in the same study, which was \$163.

ii. Recommendations for Corrective Action

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends that:

- VLF require Konffetty-RHLA to pay all of the homeworkers the legal minimum wage by:
 - Revising its piece rates for embroidery work so that the amount paid for a given piece, when divided by the number of hours required to complete the piece, inclusive of allowances for rest and preparation, results in an hourly rate of no less than the current minimum wage; and
 - Establishing, through consultation with the WRC and the homeworkers' advocate, Mujeres Transformando, a procedure for regular independent review of the piece rates to ensure consistency with the minimum wage.⁵⁷
- VLF require and, if necessary, assist Konffetty-RHLA to compensate former and current homeworkers for all owed wages as a result of Konffetty-RHLA's past failure to pay the homeworkers piece rates consistent with the legal minimum wage, including, in consultation with the WRC and the homeworkers' advocate, Mujeres Transformando:
 - Paying the full compensation owed to each homemaker for these unpaid wages under Salvadoran law;⁵⁸

⁵⁷ Paying homeworkers the legal minimum wage rate will create strong incentives for Konffetty to ensure that the homeworkers it utilizes are properly directed, equipped, and trained to embroider at an efficient pace. Konffetty-RHLA's practice of ignoring their legal obligation to pay homeworkers the minimum wage has left them with no stake in workers' efficiency: whether it takes a worker four hours to sew a piece or eight hours, the cost to Konffetty-RHLA is identical. This severing of per unit labor costs from efficiency, combined with the payment of piece rates that are too low for workers of any skill level to earn the legal minimum wage, has produced the scale of violations the WRC has documented, with workers embroidering, in many cases, for upwards of 70 hours a week for pay that is a fraction of the legal minimum.

If Konffetty-RHLA paid workers at the legal minimum rate for their time worked, including overtime pay at the required premium rates for all hours above 44 per week, Konffetty-RHLA's management would be incentivized to limit working hours by helping homeworkers increase their efficiency, by not utilizing homeworkers who lack the capability to embroider at an efficient pace, and by adding more workers when necessary to avoid excessive overtime. Increasing efficiency should moderate the labor cost increases required for the factory to comply with Salvadoran law and university codes of conduct. However, as even the fastest homeworkers are in most cases currently paid well below the legal minimum, compliance will unavoidably require substantial increases in labor costs.

⁵⁸ El Salvador's Labor Code establishes that the statute of limitations for claims by workers for unpaid wages is 180 days, but is suspended when a claim is raised with the employer for payment. See, Labor Code, Articles 613 ("Actions by workers to reclaim payment of wages ... will expire in 180 days, counted from the date on which the payment was due.") and 618 ("The limitation is interrupted ... by the interposition of a demand"). In the case of the wages owed to homeworkers by Konffetty-RHLA for nonpayment of the legal minimum wage, the relevant period for which compensation must be paid, therefore, began 180 days prior to when the WRC first informed Konffetty-RHLA of this violation and will end when Konffetty-RHLA ceases underpaying the workers. As the WRC first informed Konffetty-RHLA of this violation on August 16, 2017, the relevant period for compensation began on February 17, 2017, and currently extends to the present date.

- Developing a complete list of current and former homeworkers performing embroidery work for Konffetty-RHLA to whom this compensation should be paid; and
- Cooperating in a procedure for contacting current and former homeworkers concerning the availability of such compensation and for the distribution of these funds.

iii. Response of Licensee and Current Status

As discussed, VLF has asserted generally that the homeworkers who make its collegiate licensed goods and other products are not employees of either its supplier, Konffetty, or Konffetty's subcontractor, RHLA (or any other company), and therefore are not due any of the protections afforded to workers under Salvadoran law, including payment of the legal minimum wage. As also discussed, the WRC has concluded that this assertion is fraudulent and legally incorrect, that the homeworkers are employees of Konffetty-RHLA, and that both Salvadoran law and university codes of conduct require that their working conditions comply with Salvadoran law, including with respect to the legal minimum wage. Without conceding this issue, in discussions with the WRC, VLF, in November 2017, agreed to work with Konffetty-RHLA to address the WRC's findings in this area, as follows:

(1) Ensuring payment of minimum wages

With respect to revising the piece rates it pays to homeworkers to ensure that they are consistent with El Salvador's legal minimum wage, VLF indicated that Konffetty's engineers and in-house embroidery staff would develop such piece rates and would share a sample of these rates with the WRC for review. VLF did not provide these sample piece rates until February 2018, when it sent the WRC examples of new piece rates for five embroidery designs, which included details of the period of time allotted for each operation in the hand embroidering process for those pieces.

VLF reported to the WRC that the new piece rates represented a 10% increase over the existing piece rates that Konffetty-RHLA paid to the homeworkers. The WRC reviewed the proposed new piece rates with homeworkers to determine whether the periods of time allotted for the operations involved in completing the pieces reflected the actual amounts of time required to perform these operations and to what extent the proposed piece rates, in fact, represented an improvement over their existing rates of pay.

Interviews with homeworkers confirmed that the proposed new piece rates would represent an increased rate of pay, but also revealed that, even with this increase, the proposed piece rates would still result in an hourly wage far below the legal minimum. The latter assessment is reinforced by the fact that VLF had described the new piece rates as representing a 10% increase over the current rates paid by Konffetty-RHLA, which the WRC had found provided an average hourly wage of only \$0.45. Increased by 10%, therefore, these piece rates would still provide a wage rate of only \$0.50 per hour – just 40% of the legal minimum wage of \$1.23 per hour.

The WRC informed VLF that the new piece rates proposed by the company still fell well short of meeting Salvadoran legal minimum wage requirements. To resolve this issue, the WRC proposed, in March 2018, that an independent ombudsperson jointly approved by the WRC, Mujeres Transformando, VLF, and Konffetty-RHLA be retained by the companies to monitor the piece rates paid to homeworkers for embroidery assignments and ensure that they were sufficient to enable these workers to earn the legal minimum hourly wage.

VLF initially agreed, in principle, to the WRC's proposal for appointment of an ombudsperson to monitor the new piece rates but, in May 2018, informed the WRC that Konffetty-RHLA was now unwilling to cooperate in such a process.⁵⁹ VLF's most recent communication on this issue, in June 2018, states that the licensee's current plan for addressing this issue is for Konffetty-RHLA to cease assigning embroidery work to the homeworkers⁶⁰ – effectively threatening to deprive the homeworkers of their livelihoods and punish them for having raised with the WRC the issue of Konffetty's nonpayment of minimum wages.

(2) Compensation for prior nonpayment of minimum wage

With regard to the payment of compensation for prior underpayment of wages, VLF offered to have Konffetty-RHLA make a one-time payment to homeworkers equivalent to 10% of their earnings for the previous year. The WRC informed VLF that the amount VLF proposed for Konffetty-RHLA was far below what the workers are owed in back wages for the underpayment.

For example, the WRC reviewed a year-end income statement filed by RHLA for one of the homeworkers, which showed that this worker was paid a total of \$439 for the prior calendar year. If RHLA and Konffetty were to pay the worker 10% of this amount, she would receive slightly less than \$44.

The WRC has calculated the average amount owed to each homeworke, solely for nonpayment of the minimum wage to be \$4,150.⁶¹ Therefore, the amount that VLF proposed the homeworkers receive as compensation represented slightly more than one percent (1%) of the amount that the WRC calculates workers, on average, are actually owed for these minimum wage violations.

Accordingly, the WRC informed VLF that this offer would not represent an adequate remedy for the outstanding violation. In May 2018, VLF informed the WRC that Konffetty-RHLA was now unwilling to cooperate in providing compensation to workers for the prior underpayments.⁶²

⁵⁹ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

⁶⁰ Sandler, Travis & Rosenberg, (June 13, 2018), *supra*, n. 4.

⁶¹ $(\$1.23 \text{ minimum hourly wage} - 0.45 \text{ average reported hourly wage}) \times 70 \text{ average reported hours/week} \times 76 \text{ weeks compensation period} = \$4,150$. This amount does not include additional compensation owed to workers for nonpayment of premium wages for overtime work or other violations of Salvadoran law that are discussed in the sections to follow.

⁶² Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

b. Failure to Pay Legally Required Overtime Premiums

i. Findings

El Salvador's Labor Code requires that all hours worked by employees beyond eight hours in a single day or 44 hours in a single week must be compensated at two times the employees' ordinary rate of pay.⁶³ As the minimum wage rate in the garment sector in El Salvador for regular working hours is \$1.23 per hour, the minimum wage that must be legally paid to employees in the garment sector for overtime hours is \$2.46 per hour.

As discussed, El Salvador's Constitution states explicitly that homeworkers are to be afforded rights analogous to those enjoyed by similarly situated workers who are employed outside the home.⁶⁴ Furthermore, as noted above, the Salvadoran Labor Code establishes that homeworkers must be paid no less than the legal minimum wage paid to other workers in the garment sector. As a result, like U.S. employers who use homeworkers (in those industries where homework is legally permitted in the U.S.),⁶⁵ employers in El Salvador must pay homeworkers the legally required premium rate for all overtime hours – which, in El Salvador, are all working hours beyond eight hours in a single day or 44 hours in a single week.⁶⁶

As noted above, the number of daily working hours homeworkers reported to the WRC varied significantly. However, many testified to spending long hours on both a daily and weekly basis performing embroidery work for Konfetty-RHLA. More than 80% of the homeworkers whom the WRC interviewed reported doing embroidery for Konfetty-RHLA for more than 44 hours in a single week – the legal limit beyond which all working hours must be compensated at the premium overtime rate.

Moreover, in the case of most homeworkers who were interviewed by the WRC, the amounts of overtime they worked on a weekly basis were quite significant. On average the homeworkers interviewed stated that they did embroidery work for Konfetty-RHLA for 70 hours per week – at least 26 of which, under Salvadoran law, must be compensated as overtime. The latter figure is more than double the maximum amount of weekly overtime (12 hours) that, under university codes of conduct, licensees are permitted to allow workers producing collegiate products to perform on a regular basis.⁶⁷

Many homeworkers also reported regularly performing embroidery work for Konfetty-RHLA for well past eight hours in a single day. For example, one of the workers the WRC interviewed testified that, "I work 10 or 11 hours per day every day of the week."

⁶³ Labor Code of El Salvador, Article 89.

⁶⁴ Constitution of El Salvador, Article 41.

⁶⁵ 29 C.F.R. § 530.

⁶⁶ Labor Code of El Salvador, Article 89.

⁶⁷ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, *supra*, n. 15, Schedule I § II.B.2 ("Except in extraordinary business circumstances, hourly and/or quota-based wage employees shall (i) not be required to work more than the lesser of (a) 48 hours per week and 12 hours overtime or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture or, where the laws of such country do not limit the hours of work, the regular work week in such country plus 12 hours overtime....").

All of the hours spent by homeworkers doing embroidery work for Konffetty-RHLA that exceed eight hours in a single day or 44 hours in a single week must, under Salvadoran law, be paid at the overtime premium rate. As discussed above, the piece rate wages that Konffetty-RHLA has paid homeworkers for these hours, to date, fall far short of the legal minimum wage rate for regular working hours, much less the minimum legally required for overtime work.

The WRC's investigation found no evidence to indicate that Konffetty-RHLA provides homeworkers with any additional compensation, at a premium rate, for the hours these employees work that, under the law, must be considered overtime. Moreover, the WRC also found no evidence to indicate that Konffetty-RHLA makes any effort to limit the amount of embroidery work that it assigns to homeworkers to ensure that completing these assignments does not require homeworkers to work more than 12 hours of overtime in a single week, in violation of university codes of conduct.

The failure of Konffetty-RHLA to compensate the homeworkers for these additional hours at the overtime premium rate is a violation by the company of Salvadoran law and, by extension, a violation by VLF of university codes of conduct. Konffetty-RHLA's assignment to the homeworkers of quantities of embroidery work that require the homeworkers to perform more than 12 hours of overtime in a single week constitutes a further violation of university codes of conduct.

ii. Recommendations for Corrective Action

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends that VLF take the following actions:

- Require Konffetty-RHLA to comply with the limit on overtime work under university codes of conduct of 12 hours of overtime in a single week by refraining from assigning quantities of embroidery work to homeworkers to complete in a single week such that the total period of time required to complete the work (according to verified calculations upon which the piece rates for this work have been based) does not exceed 44 regular hours of work plus 12 hours of overtime;
- Require Konffetty-RHLA to pay all of the homeworkers the legally required premium compensation for all overtime work by:
 - Determining when the total amount of embroidery work assigned to a given employee for completion during a single week is such that the total period of time required to complete the work exceeds 44 hours in a single week; and, in such cases;
 - Paying additional piece rate compensation at the legal overtime rate (i.e., double the ordinary piece rate) for the portion of work assigned that, according to the piece rate calculations, cannot be completed within 44 hours in a single week; and

- Establishing, through consultation with the WRC and the homeworkers' advocate, Mujeres Transformando, a procedure for regular independent review of work assignments and compensation provided in order to ensure correct payment of overtime premiums; and
- Require and, if necessary, assist Konffetty-RHLA to compensate former and current homeworkers for all owed overtime compensation as a result of Konffetty-RHLA's past failure to pay the homeworkers overtime compensation for all occasions when the quantity of work assigned to them exceeded the amount that the worker could complete in 44 hours in a single week. In consultation with the WRC and the homeworkers' advocate, Mujeres Transformando, the companies should fulfill this obligation by:
 - Paying full compensation to each homemaker for unpaid overtime owed under Salvadoran law;⁶⁸
 - Developing a complete list of current and former homeworkers to whom this compensation should be paid; and
 - Cooperating in a procedure for contacting current and former homeworkers concerning these funds.

iii. Response of Licensee and Current Status

As discussed in the previous section with regard to the payment of compensation for Konffetty-RHLA's nonpayment of the minimum wage for the homeworkers' regular hours, VLF stated that Konffetty-RHLA would make a one-time payment to homeworkers, equivalent to 10% of their previous year's earnings. As noted, the WRC informed VLF that the amount VLF proposed for Konffetty-RHLA to pay was far less than the amount that workers are owed. In May 2018, VLF informed the WRC that Konffetty-RHLA was now unwilling to cooperate in providing compensation to workers for the prior underpayments.⁶⁹

The gap between the extent of underpayment that has occurred and the amount of compensation that VLF proposed has been further exacerbated by the fact that many of the homeworkers have consistently worked many hours in excess of 44 hours in a single week to complete the embroidery work they have been assigned by Konffetty-RHLA – hours which, under Salvadoran law, must be compensated at the premium overtime rate (i.e., at least twice the minimum wage). The WRC has calculated the average amount of additional compensation owed to each homemaker for nonpayment of overtime premiums to be \$2,430.⁷⁰

⁶⁸ Under Salvadoran law, the relevant period for which compensation must be paid began on February 17, 2017, and currently extends to the present date. *See, supra*, n. 58.

⁶⁹ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

⁷⁰ \$1.23/hour minimum premium for overtime work x 26 average reported overtime hours x 76 weeks compensation period = \$2,430. This amount of compensation is in addition to the compensation for underpayment of regular wages and other violations of Salvadoran law discussed in this report.

c. Uncompensated Waiting Time

i. Findings

As discussed above, homeworkers who perform embroidery work for Konffetty-RHLA travel to designated distribution sites on appointed days and times, where they submit pieces that they have embroidered, receive payment for these pieces, are assigned new pieces to embroider, and are issued fabric and thread for this purpose. Workers testified that, on these days, they meet individually at these locations with the Konffetty-RHLA representative, Jenny. While the workers are at the distribution site, Jenny first inspects and accepts (or rejects) each of the workers' completed pieces and then, afterwards, assigns to each of the workers new pieces to embroider.

Homeworkers reported, however, that the Konffetty-RHLA representative, Jenny, frequently does not arrive at the designated meeting site until significantly after the time that she has directed the workers to arrive. As a result, workers testified, they frequently must wait for her at these locations for one and one-half hours and, in some cases, more than two hours. Konffetty-RHLA does not provide workers with any compensation for this waiting time.

Homeworkers described being required to wait for the Konffetty-RHLA representative for periods of time that ranged from 30 minutes to more than two hours:

- “Jenny [the Konffetty-RHLA representative] tells us that we should be [at] the[] [meeting location] at 9:00 a.m. but she comes [only] ... at 10:30 a.m. and we have to wait that whole time. . . . She is always late and we have to wait on her.”
- “Jenny tells us to be there [at the meeting place] at 9 a.m. ... [but] [t]he earliest she arrives is 10:30 a.m. ... [and] [s]ometimes it is 11 a.m. ... [or even] 11:30 a.m.”
- “We would get there [to the meeting place] at 8 a.m. That is what time Jenny told us to be there. But she would [only] arrive at 10 a.m. We had to wait outside [the meeting place], standing, until she got there. After she got there, she would see us [i.e., meet with the workers individually] in the order that we were standing in line.”
- “We are [told by Jenny] to report to the distribution site at 2 p.m. [but] Jenny often doesn't come until 2:30 p.m. and [sometimes] we have to wait for her ... [for] as long as an hour and a half.”
- “Jenny always tells us that we should be waiting for her even if she comes late. We live a far distance away [from the meeting location] and we don't have the opportunity to eat lunch. Jenny makes us wait for her, and, if she doesn't [arrive] ... until 12 p.m.[,] then she sits down to eat lunch and we have to continue to wait without [having had] lunch [ourselves].”

El Salvador's Labor Code states explicitly that employers of homeworkers are "especially obligated ... to receive the [homeworker's completed] work and pay the [homeworker's] wages according to the way, time, and place that has been agreed upon [between the employer and the homeworker]." ⁷¹ The Labor Code goes on to establish that, if the employer does not comply with this specific requirement, the homeworker "will have the right to an indemnity for the waiting time, which will be determined according to the hourly minimum wage." ⁷²

Konffetty-RHLA's practice of requiring the homeworkers to wait for the employer's representative for significant periods of time violates the companies' obligation under Salvadoran law to receive and provide payment for the homeworkers' completed work at the times set by the employer. Accordingly, Salvadoran law requires that Konffetty-RHLA pay an indemnity to the affected homeworkers for the total period of time that these workers have been caused to wait for the employer's representative, at an hourly rate equivalent to the legal minimum wage.

The WRC found that a conservative estimate of the average amount of time that homeworkers must wait to submit their completed embroidery and receive new assignments, including both the time spent queuing to meet with the Konffetty-RHLA representative, and the additional wait time when the latter arrives late to the designated meeting place, to be two hours per week. As a result, the WRC calculated the indemnity owed to each of the homeworkers, at the legal minimum wage of \$1.23 per hour, to be \$2.46 for each week to be compensated. Konffetty-RHLA has not paid such indemnities to the homeworkers, and the WRC finds VLF's failure to ensure such payments to constitute, by extension, a further violation of university codes of conduct.

ii. Recommendations for Corrective Action

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends VLF require Konffetty-RHLA to:

- Manage and supervise the Konffetty-RHLA representative who distributes work assignments to and collects completed work from the homeworkers to consistently meet with homeworkers at the times previously established for this purpose;
- Compensate the homeworkers with an indemnity calculated at a rate no less than the legal hourly minimum wage for all periods of time that they are required to wait for the Konffetty representative when she does not arrive at the meeting place, is otherwise unavailable to meet with them at the established time, and when they must wait in queue to meet with her while she is meeting with other workers; and
- Provide compensation to former and current homeworkers for all indemnities owed to them for prior occasions on which they have been required to wait for the Konffetty-RHLA representative to collect completed embroidery and distribute new assignments,

⁷¹ Labor Code, Article 73(c).

⁷² Id.

including, through consultation with the WRC and the homeworkers' advocate, Mujeres Transformando by:

- Paying each homeworker full compensation owed under Salvadoran law for previous unpaid waiting time, which the WRC calculates as totaling \$187;⁷³
- Developing a complete list of current and former homeworkers to whom this compensation should be paid; and
- Cooperating in a procedure for contacting current and former homeworkers concerning these funds.

iii. Response of Licensee and Current Status

When the WRC initially wrote to VLF concerning the treatment of the homeworkers who embroider VLF's garments for Konffetty-RHLA, the WRC informed VLF that the Konffetty-RHLA representative, Jenny, requires homeworkers to wait for significant periods of time without compensation to receive work assignments and that this represents a further wage and hour violation.

Aside from informing the WRC that Konffetty would conduct independent and unannounced inspections at the meeting places where the Konffetty-RHLA representative distributes work assignments to homeworkers, VLF has not responded to the WRC in substance concerning this issue. However, in May 2018, VLF informed the WRC that Konffetty-RHLA is unwilling to cooperate in providing compensation to workers for prior underpayments of wages.⁷⁴

As noted, VLF has asserted, generally, that the homeworkers are not employees of Konffetty-RHLA (or any other company), and therefore are not due any of the protections afforded to workers under Salvadoran law – including, presumably compensation for waiting time. As also discussed, however, the WRC has concluded that this assertion is legally incorrect, that the homeworkers are employees of Konffetty-RHLA, and that both Salvadoran law and, by extension, university codes of conduct require that they be compensated for waiting time, in the amount of \$187 per worker.

d. Underpayment of Annual Bonuses

i. Findings

As discussed, El Salvador's Constitution requires that homeworkers are to be afforded rights analogous to those enjoyed by similarly situated workers who are employed outside the home.⁷⁵

⁷³ Under Salvadoran law, the relevant period for which compensation must be paid began on February 17, 2017, and currently extends to the present date. *See, supra*, n. 58. An indemnity of \$2.46/week x 76 weeks compensation period = \$187. This amount of compensation is in addition to the compensation owed to workers for underpayment of regular wages, and other violations of Salvadoran law discussed in this report.

⁷⁴ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

⁷⁵ Constitution of El Salvador, Article 41.

El Salvador's Labor Code requires that all employers provide workers, between December 12 and December 20 of each year, with an annual bonus (known in El Salvador as the "thirteenth month" bonus or "*aguinaldo*") in an amount that varies depending on the worker's length of service, as follows: (a) for one to three years of service, 10 days of salary; (b) for three to 10 years, 15 days of salary; and (c) for 10 years of service or more, 18 days of salary.⁷⁶ As a result, the law requires that homeworkers receive these annual bonuses according to their length of service for the employers. At the legal minimum daily wage of \$9.84,⁷⁷ the minimum annual bonus which employers are required to pay is \$98.40 for workers with one to three years of service, and \$147.60 for worker with three to 10 years of service.

As the majority of the homeworkers interviewed by the WRC had worked for Konffetty-RHLA for more than five years, under Salvadoran law, they should have received annual bonuses of at least \$147.60. The annual bonuses that homeworkers reported receiving from Konffetty-RHLA, however, only ranged from \$5 to \$30, and their relative amounts did not correspond to workers' lengths of service. For example, homeworkers told the WRC:

- "In 2017 ... [Konffetty-RHLA] gave us a snack and they gave us an extra \$5 as a holiday bonus. This is the same amount they have given me since I started working [for them]."
- "I used to receive a food basket [from Konffetty-RHLA] in December. Last year [2017] they gave us [in December] three [bars of] soap, one bottle of bleach, four rolls of toilet paper and a \$30 bonus."

The WRC concluded that, despite VLF's assertions to the contrary, the homeworkers are and have been employed by Konffetty-RHLA and that the latter is and has been required to provide these workers with annual bonuses in amounts consistent with Salvadoran law. The WRC found, however, that the bonuses that Konffetty-RHLA has provided to homeworkers fall far short of the minimum legal requirement.

ii. Recommendations for Corrective Actions

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends that VLF take the following actions:

- Require Konffetty-RHLA to comply with the legal mandate to provide homeworkers with annual bonuses according to their length of service; and
- Require and, if necessary, assist Konffetty-RHLA to compensate former and current homeworkers for Konffetty-RHLA's past underpayment of these bonuses. In consultation with the WRC and the homeworkers' advocate, Mujeres Transformando, the companies should fulfill this obligation by:

⁷⁶ Labor Code, Art. 196.

⁷⁷ See, Government of El Salvador, *Tarifa de Salario Mínimo para Maquila Textil y Confección* (December 22, 2017), *supra*, n. 50.

- Paying full compensation to each homeworker for underpayment of bonuses owed under Salvadoran law. The WRC estimates that an average figure for this underpayment is \$134 per worker;⁷⁸
- Developing a complete list of current and former homeworkers to whom this compensation should be paid; and
- Cooperating in a procedure for contacting current and former homeworkers concerning these funds.

iii. Response of Licensee and Current Status

As discussed, VLF has claimed that the homeworkers who embroider its collegiate licensed goods are not employees (of any company) and therefore are not due any of the protections afforded to workers under Salvadoran law, which include the right to an annual bonus. As also discussed above, the WRC has concluded that this assertion is fraudulent and legally incorrect, that the homeworkers are employees of Konffetty-RHLA, and that both Salvadoran law and university codes of conduct require that their working conditions comply with Salvadoran law, including with respect to provision of this bonus.

In March 2018, without conceding its position that the homeworkers are not employees, VLF proposed that in order to resolve the WRC's findings of violations of university codes of conduct, Konffetty-RHLA provide the homeworkers with certain enhancements to their compensation, including a "[y]ear-end volume bonus to be calculated at the equivalent of 0.0275% of earning[s] in the year (...equivalent to 10 days [wages], the typical year-end bonus that regular workers get in El Salvador)." ⁷⁹

VLF's March 2018 proposal for the provision of annual bonuses to the homeworkers by Konffetty-RHLA, in amounts equivalent to 10 days' wages per worker, was not consistent with Salvadoran law. As noted previously, the majority of the homeworkers working for Konffetty-RHLA had been employed in this capacity for more than five years, at which point, the law requires that each worker receive an annual bonus in amount that is no less than the equivalent of 15 days' wages.⁸⁰

Moreover, the "earnings" upon which VLF proposed the bonuses be calculated appear to be the amounts the homeworkers were actually paid by Konffetty-RHLA, which constitute only a

⁷⁸ As the average length of time that the homeworkers have been employed by Konffetty-RHLA exceeds five years but is less than ten years, the minimum annual bonus the company is required to pay is \$147. Under Salvadoran law, the relevant period for which compensation must be paid began on February 17, 2017, *see, supra*, n. 54, so the requirement to provide compensation for underpayment applies to the bonus paid in December 2017. As the average bonus homeworkers reported receiving from Konffetty-RHLA was \$13, the average underpayment which must be compensated is \$147- \$13 = \$134. This compensation is in addition to the compensation owed to workers for underpayment of regular wages, and other violations of Salvadoran law discussed in this report.

⁷⁹ Email from Sandler, Travis & Rosenberg, P.A. to the WRC on behalf of VLF, March 3, 2018. Parenthetical remarks are in the original. Bracketed text is added for clarity.

⁸⁰ Labor Code, Article 196,

fraction of the wages the workers were legally required to be paid under Salvadoran law. In any case, in May 2018, VLF informed the WRC that Konffetty-RHLA was no longer willing to take measures to resolve the underpayment of compensation to the homeworkers that the WRC had identified.⁸¹

e. Failure to Post Rates of Pay at Work Distribution Site

i. Findings

El Salvador's Labor Code establishes a "special obligat[ion]" on the part of employers of homeworkers to "affix the rates of pay in a visible place in the locations where work [assignments are] ... distributed and [completed work is] received."⁸² Homeworkers performing embroidery work for Konffetty-RHLA report, however, that the rates of pay (i.e. piece rates) for the work they are assigned are not posted in writing at locations where the company representative, Jenny, receives their completed embroidery and gives them new assignments.

Moreover, even when individual homeworkers specifically request this information, the Konffetty-RHLA representative, Jenny, does not verbally disclose to workers the piece rates that they will be paid for the assignments they are being given to complete. Workers are only able to learn the piece rates for their assignments after they have completed them, and then only if they ask the other Konffetty-RHLA representative present, Wilfredo ("Will" or "Willy"), who is responsible for paying them, for this information.

Workers interviewed by the WRC stated:

- "They [Konffetty-RHLA] never tell us what the rate is for each piece. They just give us the cloth insert [i.e., fabric to be embroidered], the thread, and the sample [design] and it is only when we turn in the completed piece that we learn what they will pay. They have never given us anything in writing."
- "After [Jenny] looked everything over [i.e., our completed work], she sends us to Will for him to pay us. It isn't until then that we find out how much each [completed] piece is worth, [and then only] because we ask."
- "Willy never tells us how much we are being paid for each piece. Only if we ask this, will he tell us."

Konffetty-RHLA's failure to post the piece rates for the embroidery pieces assigned to homeworkers at the locations where this work is distributed and collected by the company violates Salvadoran laws for the protection of homeworkers and, by extension, places the licensee, VLF, in violation of university codes of conduct.

⁸¹ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

⁸² Labor Code, Article 73(a).

ii. Recommendations for Corrective Action

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends that VLF require Konffetty-RHLA to post the piece rate that will be paid for each embroidery assignment issued to homeworkers, along with the number of hours calculated for its completion, at the meeting places where Konffetty-RHLA distributes these assignments.

iii. Response of Licensee and Current Status

In response to the WRC's recommendation that Konffetty-RHLA post the piece rates it pays for embroidery work at the meeting places where homeworkers receive work assignments, VLF informed the WRC that Konffetty-RHLA had agreed to begin doing this. In a March 3, 2018 email, VLF's attorneys stated that Konffetty would commit to "[p]osting of piece rates at the location of drop off and pick up."

However, in May 2018, VLF informed the WRC that Konffetty-RHLA is now unwilling to implement even the limited corrective measures to which it had previously agreed.⁸³ Homeworkers interviewed by the WRC in July 2018 reported that Konffetty-RHLA still does not post the piece rates it pays at the meeting places where homeworkers receive embroidery assignments.

3. Legally Required Benefits

a. Healthcare and Pension Benefits

i. Findings

University codes of conduct require licensees to ensure that workers in their supply chains for collegiate goods are provided with all legally required benefits. As discussed, Salvadoran laws require employers to enroll and make contributions for all workers, including homeworkers, in the country's public healthcare system, the Salvadoran Institute of Social Security ("ISSS"), and a government-approved pension fund. The Salvadoran Law on Social Security, which mandates enrollment of all workers in the ISSS, states, "Obligatory Social Security is applied to all workers who depend upon an employer, no matter what type of labor relationship binds them together or the way in which payment has been established."⁸⁴

The cost for workers' coverage by the ISSS is shared between employers, who are required to contribute to the system in the amount of 7.5% of each worker's earnings, and employees, from whose pay a contribution of 3% of each employee's wages is deducted.⁸⁵ Employers have the responsibility of submitting both contributions to the ISSS.

⁸³ Sandler, Travis & Rosenberg, (May 17, 2018), *supra*, n. 5.

⁸⁴ Salvadoran Law on Social Security, Article 3.

⁸⁵ *Id.*, Article 46.

Salvadoran employers are also legally required to enroll all employees, including homeworkers, in a pension fund that has been approved by the government.⁸⁶ The country's pension law also requires joint contributions from both employees, from whose pay the employer is required to deduct 7.75% of earnings, and employers, who are required to contribute an amount equal to 7.25% of each worker's pay.⁸⁷ Employers are required to submit these contributions for the workers to one of two government-approved pension funds.

Homeworkers interviewed by the WRC reported, and VLF confirmed, that the homeworkers have not been enrolled in or had contributions made for them to the ISSS or to a government-approved pension fund by Konfetty or RHLA. The failure to provide homeworkers healthcare benefits and contributions to the pension system violates Salvadoran law and, by extension, university codes of conduct. The WRC estimates that, as of September 2018, each homeworker is owed, on average, \$1,170 in compensation for the company's failure to provide these health care and pension benefits.⁸⁸

ii. Recommendations for Corrective Action

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends the following:

- VLF require Konfetty-RHLA to enroll and make contributions for all of the homeworkers in the ISSS and in one of the government-approved pension plans; and⁸⁹

⁸⁶ Salvadoran Law of the Pensions Savings System.

⁸⁷ Mariana Belloso, "Vigentes nuevas tasas de cotización para pensiones," *La Prensa Grafica* (October 16, 2017), <https://www.laprensagrafica.com/economia/Vigentes-nuevas-tasas-de-cotizacion-para-pensiones-20171015-0063.html>.

⁸⁸ El Salvador's Labor Code establishes that the statute of limitations for claims by workers for unpaid benefits is 60 days, but is suspended when a claim is raised with the employer for payment. Labor Code, Articles 611 and 618 ("The limitation is interrupted ... by the interposition of a demand"). In the case of the compensation owed to homeworkers by Konfetty-RHLA for failure to make contributions to ISSS or an approved-pension fund, the relevant period for which compensation must be paid began 60 days prior to when the WRC first informed Konfetty-RHLA of this violation, and will end when Konfetty-RHLA begins making such contributions for the workers. As the WRC first informed Konfetty-RHLA of this violation on August 16, 2017, the relevant period for compensation began on June 17, 2017 and currently extends to the present date. The amount of compensation required to be paid to each of the homeworkers is the total employer contribution that Konfetty-RHLA would have had to make for the homeworker to the ISSS (7.5% of wage earnings) and to the government-approved pension funds (7.75% of wage earnings) in this period if Konfetty-RHLA had paid workers during this time in accordance with El Salvador's minimum wage and overtime laws. In other words, the compensation owed to workers is 15.25% of the total wages that workers would have been paid during the relevant period if they had received the minimum wage and overtime premiums for their work. Homeworkers who embroider for Konfetty-RHLA, on average, report working 70 hours per week, of which 26 hours are legally considered overtime. The legal minimum wage required for this work schedule is \$118/week: (\$1.23/hour x 44 regular hours/week) + (\$1.23/hour x 26 overtime hours/week x 2 overtime premium). The mandatory minimum ISSS and pension contributions from an employer whose employees work this schedule is \$18 per week (\$118 x .1525), or \$78 per month per employee. This compensation is in addition to the compensation for underpayment of regular wages, and other violations of Salvadoran law discussed in this report.

⁸⁹ The WRC has consulted with pension and benefits experts in El Salvador who reported that it is possible for Konfetty-RHLA to enroll and make contributions for the homeworkers in the ISSS (public health care system) and the government-approved pension funds.

- VLF require and, if necessary, assist Konffetty-RHLA to fully compensate former and current homeworkers for Konffetty-RHLA's past failure to enroll and make contributions for the homeworkers in the ISSS and pension system including, through consultation with the WRC and the homeworkers' advocate, Mujeres Transformando:
 - Paying full compensation to each homemaker for unpaid employer contributions to the pension fund system and the ISSS (public healthcare system);
 - Developing a complete list of current and former homeworkers performing embroidery work for Konffetty-RHLA to whom this compensation should be paid; and
 - Cooperating in a procedure for contacting current and former homeworkers concerning the availability of such compensation and for the distribution of these funds.

iii. Response of Licensee and Current Status

As discussed, VLF has claimed that the homeworkers who embroider its collegiate licensed goods are not employees (of any company) and therefore are not due any of the protections afforded to workers under Salvadoran law, including statutory healthcare and retirement benefits. As also discussed above, the WRC has concluded that this assertion is fraudulent and legally incorrect, that the homeworkers are employees of Konffetty-RHLA, and that both Salvadoran law and university codes of conduct require that their working conditions comply with Salvadoran law, including with respect to provision of these benefits.

Without conceding its position that the homeworkers are not employees, VLF, in November 2017, agreed to work with Konffetty-RHLA to address the WRC's findings in this area. VLF proposed that Konffetty-RHLA, rather than enrolling the homeworkers in and contributing to the ISSS (public healthcare) and government-approved pension funds, instead pay for "[m]edical visits and for workers and children under 6 years of age" and "subsidized medicines so that the worker only has a co-pay of \$1 per prescription medicine."

Additionally, VLF said that Konffetty-RHLA would pay each worker an additional amount equal to 7.75% of the worker's earnings, "up to \$20 a month." Lastly, VLF stated that the workers would be provided with a year-end party for the homeworkers and their children, and school supplies for the homeworkers' children at the beginning of each school year.⁹⁰

VLF's proposal was neither consistent with Salvadoran law – which explicitly requires that workers be enrolled in the country's healthcare and pension systems – or, by extension, university codes of conduct, which mandate provision of all legally required benefits. Furthermore, VLF's proposal, if implemented, would not have provided benefits to homeworkers that are comparable to those the workers would gain access to if Konffetty-RHLA simply

⁹⁰ Email from Sandler, Travis & Rosenberg, P.A. to the WRC on behalf of VLF, March 3, 2018.

complied with the law's requirements. Provision of a limited number of outpatient medical visits and medications falls far short of the range of in-patient and out-patient benefits that Salvadoran workers and their families are offered under the public healthcare system, which include, in particular, paid maternity leave.⁹¹

Similarly, while a monetary benefit equal to 7.75% of earnings appears to match the legally-mandated rate of employer contributions for workers' pensions, VLF's proposal was to cap this benefit at a maximum of \$20 per month, while the minimum legally required contribution for a fulltime employee in El Salvador's garment sector is \$23 per month.⁹²

Therefore the *maximum* benefit VLF was proposing for Konffetty-RHLA to provide to homeworkers is actually less than the *minimum* benefit that the law requires for *any* fulltime worker. Moreover, since, as discussed, most of the homeworkers who embroider for Konffetty-VLF also regularly work a substantial number of overtime hours, for which additional contributions are required, the gap between the value of the benefit VLF proposed for Konffetty-RHLA to provide to the homeworkers and the level of benefits that the law requires is quite large.⁹³

More fundamentally, VLF's proposal would have also failed to provide homeworkers with the basic benefit that El Salvador's pension law requires that they receive. It would not have guaranteed that homeworkers have a pension fund account into which not only the employer's contribution but also an automatic contribution from workers' own wages are regularly deposited so that workers can save money over time for their retirement.

In any event, in May 2018, after the WRC informed VLF that the benefits VLF was proposing for Konffetty-RHLA to provide to the homeworkers fell short of the requirements of Salvadoran law (and, therefore, university codes of conduct), this offer was effectively withdrawn. VLF told the WRC that Konffetty-RHLA is now unwilling to cooperate in providing compensation to homeworkers for past underpayments.⁹⁴

b. Failure to Provide Paid Annual Leave

i. Findings

As discussed, El Salvador's Constitution requires that homeworkers are to be afforded rights analogous to those enjoyed by similarly situated workers who are employed outside the home.⁹⁵

⁹¹ Salvadoran Law on Social Security, *supra*, n. 33.

⁹² The current monthly minimum wage for Salvadoran garment workers is \$299.30, of which 7.75%, the legally required rate for pension contributions from employers, is a little more than \$23. Government of El Salvador, *Tarifa de Salario Mínimo para Maquila Textil y Confección* (December 22, 2017), *supra*, n. 50.

⁹³ Homeworkers who embroider for Konffetty-RHLA, on average, report working 70 hours per week, of which 26 hours are legally considered overtime. The mandatory minimum pension contribution from an employer whose employees work this schedule is \$9.15 per week (\$118 x .0775), or \$40 per month – twice the maximum amount that VLF proposed for Konffetty to contribute.

⁹⁴ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

⁹⁵ Constitution of El Salvador, Article 41.

El Salvador's Labor Code requires that employers provide all workers with at least one year of service with 15 days of annual leave, during which time workers shall be paid at the rate of 130% of their regular wages.⁹⁶ All of the homeworkers interviewed by the WRC had been performing embroidery work for Konffetty-RHLA for more than one year and therefore were legally due such paid annual leave.

The WRC concluded that, despite VLF's assertions to the contrary, the homeworkers are and have been employed by Konffetty-RHLA and that the latter is and has been required to provide these workers with 15 days of paid annual leave per year. The WRC also found that Konffetty-RHLA has failed to provide homeworkers with this benefit.

ii. Recommendations for Corrective Actions

To ensure compliance with Salvadoran law and university codes of conduct, the WRC recommends that VLF take the following actions:

- Require Konffetty-RHLA to comply with the legal mandate to provide homeworkers with paid annual leave;
- Require and, if necessary, assist Konffetty-RHLA to compensate former and current homeworkers for all owed paid annual leave as a result of Konffetty-RHLA's past failure to pay the homeworkers this leave. In consultation with the WRC and the homeworkers' advocate, Mujeres Transformando, the companies should fulfill this obligation by:
 - Paying full compensation to each homemaker who has been working for Konffetty-RHLA for at least one year for paid annual leave owed under Salvadoran law. At the legal minimum daily wage of \$9.84,⁹⁷ the value of the minimum annual paid leave which employers are required to provide to workers with at least one year of service is \$192 per year;⁹⁸ and
 - Developing a complete list of current and former homeworkers to whom this compensation should be paid; and
- Cooperating in a procedure for contacting current and former homeworkers concerning these funds.

iii. Response of Licensee and Current Status

As discussed, VLF has claimed that the homeworkers who embroider its collegiate licensed goods are not employees (of any company) and therefore are not due any of the protections afforded to workers under Salvadoran law, which include the right to an annual bonus. As also

⁹⁶ Labor Code, Article 166.

⁹⁷ See, Government of El Salvador, *Tarifa de Salario Mínimo para Maquila Textil y Confección* (December 22, 2017), *supra*, n. 49.

⁹⁸ \$9.84/day minimum wage x 15 days paid annual leave x 130%. See, Labor Code, Article 166.

discussed above, the WRC has concluded that this assertion is fraudulent and legally incorrect, that the homeworkers are employees of Konffetty-RHLA, and that both Salvadoran law and university codes of conduct require that their working conditions comply with Salvadoran law, including with respect to provision of paid annual leave.

In May 2018, VLF informed the WRC that Konffetty-RHLA was not willing to take measures to resolve underpayment of compensation to the homeworkers.⁹⁹ The WRC estimates that the average amount of compensation owed to each homeworkeer with one or more years of service as a result of Konffetty-RHLA's failure provide this legally required benefit to be \$239.85.¹⁰⁰

4. Harassment and Abuse

a. Findings

El Salvador's Labor Code requires employers to treat workers with due consideration, "abstaining from mistreatment by deed or by word."¹⁰¹ University codes of conduct likewise prohibit any verbally abusive treatment of employees.¹⁰²

Homeworkers interviewed by the WRC reported, however, that the Konffetty-RHLA representative, Jenny, who approves their completed embroidery work and issues them additional assignments, treats the homeworkers in an abusive and humiliating manner. Workers stated that this abusive behavior occurs most frequently when Jenny inspects their completed work.

Workers related multiple incidents in which Jenny rejected homeworkers' completed embroidery by throwing it down and saying, "This is no good!" Homeworkers added that the Konffetty-RHLA representative also frequently yelled at them, called them "mules," and told them that they "can't do anything right" and that their work is "just a waste of time for her [Jenny]." The Konffetty-RHLA representative's verbal abuse of homeworkers represents a violation of both Salvadoran law and university codes of conduct.

b. Recommendations for Corrective Action

The WRC recommends that VLF require Konffetty-RHLA to ensure that all abusive treatment of homeworkers is eliminated. The WRC recommends that the Konffetty-RHLA representative, Jenny, either be reassigned to other work where she does not interact with the homeworkers or

⁹⁹ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

¹⁰⁰ Under Salvadoran law, the relevant period for which compensation must be paid began on June 17, 2017, and currently extends to the present date. *See, supra*, n. 85. Therefore, compensation required for paid annual leave accrued over a period of 15 months (1.25 years) is equal to $1.25 \times \$191.88/\text{year}$, *see, supra*, n. 95, or \$239.85. This compensation is in addition to the compensation for underpayment of wages and other violations of Salvadoran law discussed in this report.

¹⁰¹ Labor Code, Article 29(5).

¹⁰² IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, *supra*, n. 13, Schedule I § II.B.8 ("Harassment or Abuse: Every employee shall be treated with dignity and respect. No employee shall be subject to any ... verbal harassment or abuse.").

be placed on notice that further reports of abusive behavior will result in discipline.

c. Response of Licensee and Current Status

VLF responded to the WRC's findings by stating that Konffetty had communicated with RHLA about the need to correct the abusive behavior of the person assigned to work with homeworkers. VLF shared with the WRC a letter dated August 21, 2017, from Konffetty to RHLA asking the latter to "control this unacceptable mistreatment" and to "establish control measures to ensure that this kind of behavior is not repeated, ensuring a treatment that respects the dignity of the contracted individuals." VLF also informed the WRC that Konffetty would conduct independent and unannounced inspections at the distribution sites to ensure that there was no further mistreatment of workers.

The WRC conducted follow-up interviews with homeworkers who reported that the Konffetty-RHLA representative's treatment of the workers had improved. However, further verification will be needed as to whether this improvement is sustained.

5. Freedom of Association

a. Findings

The Constitution¹⁰³ and Labor Code¹⁰⁴ of El Salvador, as well as university codes of conduct,¹⁰⁵ protect workers' right to freedom of association. Homeworkers performing embroidery work for Konffetty-RHLA have attempted to exercise their associational rights, first, through participating in collective education on their labor rights provided by the women's organization, Mujeres Transformando, and, subsequently, by lodging a collective complaint with the WRC concerning Konffetty-RHLA's violations of these rights.

The WRC found multiple incidents in which Konffetty-RHLA and, in at least one instance, VLF itself, threatened to retaliate against homeworkers for associating with the women's rights organization, Mujeres Transformando, and lodging a complaint of labor rights violations with the WRC. Moreover, the WRC also found specific instances in which Konffetty-RHLA had followed through on these threats through actual retaliation and discrimination against homeworkers involved in associational activities. The WRC's findings concerning specific violations of freedom of association are detailed below.

i. Threats of retaliation against homeworkers for participating in associational activities

Homeworkers interviewed by the WRC reported that, beginning in early 2016 and continuing through mid-2017, the Konffetty-RHLA representative, Jenny, who provides their work

¹⁰³ Constitution of El Salvador, Article 7 ("The inhabitants of El Salvador have the right to associate freely and to meet peacefully, without arms, for any lawful purpose.").

¹⁰⁴ Labor Code of El Salvador, Article 204 ("Private sector workers... have the right to associate freely to defend their common economic and social interests").

¹⁰⁵ IMG College Licensing, *Special Agreement Regarding Workplace Codes of Conduct*, *supra*, n. 13, Schedule I § II.B.9 ("Licensees shall recognize and respect the right of employees to freedom of association....").

assignments and approves their completed work, threatened them, on multiple occasions, with retaliation for the homeworkers' association with the women's organization, Mujeres Transformando. Specifically, after homeworkers began meeting with the women's rights organization to discuss their working conditions, the Konffetty-RHLA representative responded by telling the homeworkers repeatedly that they would suffer loss of work from Konffetty-RHLA as a result of their participation in these meetings.

Workers told the WRC that the Konffetty-RHLA representative, Jenny, had stated to them:

- “I understand that you have been wasting your time in meetings [i.e., with Mujeres Transformando] that don't do anything for you. If you continue to meet like that, all that you are going to get is a factory closure and the factory will move somewhere else. You need the work. What do you want to do—continue to embroider or go to those meetings?”
- “You have to decide: do you want to be with Mujeres Transformando or do you want to continue to receive embroidery work?”
- “Those women [Mujeres Transformando]... what they want is for you all to lose your jobs. That is why I am not going to give you work You all have to decide who you want to be with. ... No one else is offering you work that allows you to be at home and taking care of your children.”
- “There are a group of women [homeworkers] here who meet with a group of women who are fighting against the company, [i.e., Mujeres Transformando] and I am not going to continue giving them [these homeworkers] work.”
- “Those of you who are going to meet with those women [i.e., Mujeres Transformando] are never going to get any work. [But] [t]hose of you who do not go [to meet with Mujeres Transformando] will never be left without work.”

Homeworkers also testified to the WRC regarding the intimidating and chilling effects that these threats of loss of work issued by the Konffetty-RHLA representative had on other homeworkers and the workers' associational activities. One worker told the WRC:

Jenny g[ot] very upset when she learn[ed] that one of the homeworkers said something about the group, Mujeres Transformando. . . . [and] told three of my coworkers that our distribution group [of homeworkers who embroider for Konffetty-RHLA] will be shut down because of those ‘women troublemakers.’

My three coworkers said that they are no longer going to meetings with Mujeres Transformando because they are afraid of losing the little bit of work that they have.

Konffetty-RHLA's issuing intimidating and retaliatory threats to homeworkers in response to the workers' decision to meet with a women's rights organization to discuss their working

conditions violated the workers' right to freedom of association under both Salvadoran law and university codes of conduct.

ii. Retaliatory Termination and Refusal to Rehire Homeworkers for Associational Activities

The WRC found that in conjunction with the issuance of the threats discussed above, Konffetty-RHLA, retaliated against at least five homeworkers who had participated in associational activities with Mujeres Transformando by refusing to provide them with embroidery assignments.

Reported Retaliatory Terminations and Refusal to Rehire in 2016

Two homeworkers who previously did embroidery work for Konffetty-RHLA told the WRC that in January 2016 the Konffetty-RHLA representative, Jenny, met with them and a group of other homeworkers and said to these workers, "Who among you is meeting with those women [Mujeres Transformando]? Those women are tricking you." On the same day, Jenny spoke directly to the first worker, and told her, "I know you are meeting with Mujeres Transformando, that is what other[] [homeworkers] are telling me."

The second homeworker related that the following week, Jenny, the Konffetty-RHLA representative, told her individually, "Look, I know you are meeting with those women and you didn't want to tell me.... If you continue to go to those meetings, there won't be any work for you. So you have to decide if you want work or if you want to run around with that group of women." Within three weeks of Jenny having issued this threat, the two workers reported, the Konffetty-RHLA representative ceased giving either of them any additional embroidery assignments, despite these workers returning to the meeting place on several successive weeks to request being given work.

A third homeworker, who had done embroidery work for Konffetty-RHLA until 2014, but then ceased work after giving birth, told the WRC that, two years later, in 2016, she had applied to Jenny, the Konffetty-RHLA representative, to resume receiving embroidery work assignments. Upon meeting with this homeworker, Jenny reportedly asked her "Aren't you one of the women who is meeting with 'that group of women' that hold meetings [Mujeres Transformando]?" Although the worker denied any involvement with Mujeres Transformando, Jenny told her, "I have heard rumors that you are meeting with those women." Jenny then informed this worker that Konffetty-RHLA would not provide this worker with any embroidery assignments.

Retaliatory Terminations in 2017

Workers reported to the WRC that in 2017 the Konffetty-RHLA representative, Jenny, continued to interrogate homeworkers specifically as to whether these certain workers had participated in meetings with "the women in purple" [a reference to Mujeres Transformando, whose organizers often wear purple shirts]. Jenny reportedly told these workers, "I am sure that both of them [two of the homeworkers who were subsequently terminated] are meeting with those women [Mujeres Transformando] because they are causing trouble and making me look bad."

The WRC found that, in the case of one of these homeworkers, the Konffetty-RHLA representative, Jenny, after having also interrogated this homeworker directly about her associational activities and directing her to stop participating in them, ceased giving this worker further embroidery assignments as well, effectively terminating her employment. This worker reported that the Konffetty-RHLA representative, Jenny, frequently asked her and other homeworkers whether the homeworkers were in contact with the organization, Mujeres Transformando, and had, directly, asked this homeworker if she was participating in meetings with the women's organization. Fearing that she would no longer receive work from Konffetty-RHLA if she admitted that she did attend these meetings, this worker responded that she did not attend any meetings with the organization. The worker reported to the WRC that Jenny then told her, "You should never meet with those women [i.e., Mujeres Transformando]."

Shortly after this incident, the Konffetty-RHLA representative, in June 2017, stopped assigning this homeworker any further embroidery work. The worker reported to the WRC that, when she asked Jenny for the reason she was not being assigned further embroidery work, the Konffetty-RHLA representative told the worker that this was due to the fact that she arrived later than other homeworkers to the meeting place where piecework assignments were distributed. However, this homeworker, who reported that she had been performing piecework at her home for Konffetty for nine years, told the WRC that she when she had arrived at the meeting place later than other workers on previous occasions, the Konffetty-RHLA representative had not expressed any objection.

The timing of the homeworker's termination, after nine years of employment, was not preceded by any indication that she had engaged in unsatisfactory conduct, but directly followed the Konffetty-RHLA representative's issuing of retaliatory threats and interrogating both this worker and other homeworkers specifically concerning this homeworker's associational activities. This timing, along with the hostile animus displayed by the Konffetty-RHLA representative, indicates that the rationale given by the employer representative for the worker's termination was pretextual and that the actual motive for the action taken against her by Konffetty-RHLA was retaliatory.

Konffetty-RHLA subsequently terminated another homeworker by refusing to give her work assignments in October 2017. When the worker asked the Konffetty-RHLA representative, Jenny, why the latter was refusing to give her further assignments, Jenny reportedly told the homeworker that she, Jenny, did not consider this homeworker capable of completing the embroidery that was needed by Konffetty.

Prior to this point, however, this homeworker had been working from her home for Konffetty-RHLA for eight years and the assignments that Jenny was refusing to give her were not significantly different than those which this homeworker had completed satisfactorily in the past. This worker was the other of the two homeworkers of whom the Konffetty-RHLA representative reportedly had stated, "I am sure that both of them [the two homeworkers] are meeting with those women [Mujeres Transformando] because they are causing trouble and making me look bad."

Here as well, the WRC concluded, on the basis of the animus displayed by the Konffetty-RHLA representative, and the sequence of these events, that the rationale that the worker was given for her termination was pretextual and that Konffetty-RHLA's termination of this homeworker was also retaliatory. Konffetty-RHLA's engaging in what was, effectively, a retaliatory termination of the two workers for their participation in associational activities with the women's rights organization, Mujeres Transformando, represents a violation of the workers' right to freedom of association under Salvadoran law and, by extension, university codes of conduct.

iii. Discrimination in Assigning Work on Account of Homeworkers' Associational Activities

Homeworkers also reported to the WRC that the Konffetty-RHLA representative, Jenny, deliberately discriminated against them on account of their associational activities in assigning embroidery work among individual homeworkers. Specifically, homeworkers told the WRC that the Konffetty-RHLA representative reduced the amount of work she assigned and gave less desirable assignments to homeworkers whom she believed were meeting with other homeworkers and the women's rights organization, Mujeres Transformando, and, conversely, assigned more work to homeworkers whom she believed were not participating in such meetings.

One homeworker testified to the WRC:

When Jenny found out that we were part of Mujeres Transformando, she didn't give us [as much] work. She found out [that we were meeting with Mujeres Transformando] because we invited another homeworker to a meeting and she told Jenny which workers attended this meeting. That is why [Jenny] stopped giving the workers who were part of Mujeres Transformando as much work. . . . She has been reducing the number of assignments that she gives to us and rejecting [our] completed pieces. She wants us to be scared of her and to stop fighting for our rights.

Another homeworker stated, "Jenny doesn't give the workers [whom] she thinks are part of Mujeres Transformando very much work and if she does give us work, she gives us the most challenging pieces. . . . She f[ound] out that I was meeting with Mujeres Transformando and that is why she started giving me less work."

By contrast, another homeworker told the WRC that the Konffetty-RHLA representative, Jenny, assigned her *more* work after Jenny interrogated this homeworker and satisfied herself that the homeworker was not currently engaging in associational activities:

When I first started working [for Konffetty-RHLA], Jenny asked me if I was going to meetings with Mujeres Transformando and I lied, telling her that I used to meet with them, but then I stopped and I didn't have time to do that [i.e., attend the meetings] anymore. After I told her that, Jenny started giving me more work. Jenny told me that she was giving me work because I came to the distribution site alone and that if I showed up [as part of] a group of other workers [i.e., with the homeworkers associating with Mujeres Transformando], she wouldn't give me work.

Discriminating among workers in assignments on the basis of workers' participation or nonparticipation in associational activities represents a further violation of workers' right to freedom of association under both Salvadoran law and university codes of conduct.

iv. Threat of Elimination of Work for Lodging Complaint with WRC

As discussed, in May 2018, VLF informed the WRC that Konffetty-RHLA was unwilling take further steps to implement the corrective actions the WRC identified as necessary to bring their treatment of homeworkers into compliance with Salvadoran law and university codes of conduct.¹⁰⁶ The WRC then notified VLF that the WRC would proceed to publish a report to the WRC's university affiliates detailing the WRC's findings of violations of these standards and recommendations for corrective action.

In June 2018, VLF further informed the WRC that, due to "the impossibility of satisfying WRC's requirements" concerning treatment of the homeworkers, starting in 2019 it would "shift to machine smocking" and that "[a]ll collegiate manufacturing work will be made inside Konffetty's factory with full-time employees registered with the Ministry of Labor, with all the rights and privileges that accrue to full-time employees."¹⁰⁷ Although VLF claimed to the WRC that "[t]his decision is not retribution,"¹⁰⁸ such a response to the WRC's recommendations for corrective action would directly result in a loss to the homeworkers of income from embroidering, at the very least, VLF's collegiate apparel, and, possibly, other garments – depending on the impact of a more general "shift to machine smocking."

Contrary to VLF's claim, however, this threat of loss of income for the homeworkers is directly retaliatory in nature. As VLF admitted, the very reason that Konffetty is contemplating this move is because Konffetty views the "WRC's requirements" – i.e., the correction of Konffetty-RHLA's labor rights violations against the homeworkers – to be "impossible to satisfy." Konffetty took this position directly after the company was informed that the WRC did not agree that a one-time 10% bonus, a 10% wage increase, a \$20 per month in lieu of healthcare and pension benefits, and other limited benefits were sufficient to remedy the WRC's findings that Konffetty-RHLA had, for years, paid homeworkers less than a third of the legal minimum wages they were owed and avoided making any contribution whatsoever to providing these workers benefits clearly required under Salvadoran law.

These WRC findings – and the WRC's resulting recommendations for corrective action were, in turn, a direct outcome of the homeworkers, with the assistance of Mujeres Transformando, having brought a complaint to the WRC concerning Konffetty-RHLA's violation of their labor rights. If the homeworkers had not brought this complaint to the WRC through Mujeres Transformando, the WRC would not have initiated the investigation of Konffetty-RHLA's use of homeworkers and would not have issued findings and recommendations for remediation of violations of the homeworkers' rights. Since the homeworkers' original decision, through Mujeres Transformando, to collectively inform the WRC that Konffetty-RHLA was violating

¹⁰⁶Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

¹⁰⁷ Sandler, Travis & Rosenberg (June 13, 2018), *supra*, n. 4.

¹⁰⁸ *Id.*

their rights was, in fact, a primary cause of Konffetty's announcing that it intends to withdraw work from the homeworkers, the company's announcement represents an act of retaliation for workers' exercise of associational rights – and a further violation of Salvadoran law and university codes of conduct.

b. Recommendations for Corrective Action

The WRC recommends that, to address the violations of freedom of association Konffetty-RHLA had committed against the homeworkers, VLF require Konffetty-RHLA to:

- Issue a verbal and written statement to all homeworkers stating that Konffetty-RHLA respects workers' right to discuss workplace conditions with and to join such organizations as they wish, including Mujeres Transformando, and informing the workers that they will not be monitored, disciplined, or discriminated against in any way for exercising this right. The WRC recommends that both Mujeres Transformando and the WRC approve the contents of this statement in advance and be present at the time that the statement is shared with the company's homeworkers;
- With regard to the five homeworkers who were terminated and/or denied rehiring in 2016 and 2017 for meeting with Mujeres Transformando, offer these workers the opportunity to resume receiving embroidery assignments from Konffetty-RHLA;
- With regard to the two homeworkers who were terminated in 2017 for meeting with Mujeres Transformando, provide these workers with compensation for their lost income as a result of this retaliatory conduct on the part of the company;
- Issue assignments to individual homeworkers without regard to whether or not a given homeworker is or has been participating in associational activities and establish, through consultation with the WRC and the homeworkers' advocate, Mujeres Transformando, a procedure for regular independent review of work assignments in order to avoid incidents of discrimination against homeworkers on account of their associational activities; and
- Refrain from any discontinuation of assignment of embroidery work to homeworkers on account of homeworkers having submitted a complaint to the WRC and the WRC having issued findings of violations and recommendations for corrective action.

c. Response of Licensee and Current Status

i. Threats of Retaliation Against Homeworkers for Associational Activities

The WRC initially informed VLF that the Konffetty-RHLA representative had threatened homeworkers with retaliation for their associational activities in August 2017. VLF responded by telling the WRC that Konffetty had communicated to RHLA regarding these findings. VLF supplied the WRC with a letter from Konffetty to RHLA, dated August 21, 2017, informing

RHLA that if homeworkers are being told that they cannot freely associate, this behavior should cease and that RHLA should communicate to the homeworkers about their right to freedom of association.

VLF expressed to the WRC its willingness to require Konffetty-RHLA to issue a statement to the homeworkers affirming respect for their right to freedom of association and agreed to consider text for such a statement to be proposed by the WRC. The WRC sent proposed text for such a freedom of association statement, based on similar statements issued to workers at other garment factories in El Salvador as a step in remedying similar violations of freedom of association.

VLF's sole stated objection to the text that the WRC proposed was that the statement referred specifically to Mujeres Transformando as one of the organizations with which homeworkers were permitted to associate. VLF's position was that the reference to a specific organization was unnecessary, but the WRC reiterated that, as all of the violations of freedom of association that the WRC had found Konffetty-RHLA to have committed were directed at the homeworkers' association with Mujeres Transformando, the specific reference was relevant and necessary.

VLF also objected to the WRC and Mujeres Transformando being present for the reading of the freedom of association statement to the homeworkers and instead offered to provide a video recording of the issuing of the statement. The WRC reiterated that the presence of Mujeres Transformando and the WRC at the reading of the statement was necessary to affirm that Konffetty-RHLA was no longer opposed to homeworkers associating with these organizations and that the message was effectively delivered to workers in a manner that did not express any bias or veiled threats to workers. In May 2018, VLF informed the WRC that Konffetty-RHLA was no longer willing to cooperate in implementing the corrective actions the WRC had identified as necessary.

ii. Retaliatory Termination of Homeworkers for Associational Activities

In fall 2017, the WRC shared with VLF the finding that Konffetty-RHLA earlier that year had terminated two homeworkers for associational activities. VLF responded by claiming that these workers had voluntarily ceased accepting assignments from Konffetty-RHLA. However, VLF subsequently informed the WRC that Konffetty-RHLA was willing to resume assigning work to the two homeworkers and that, although Konffetty-RHLA did not acknowledge that any violation had occurred, Konffetty-RHLA would provide compensation to the workers for the period that they had not received assignments.

The WRC communicated VLF's response to the two homeworkers and informed them that they should return to the meeting places where they previously had received work assignments from Konffetty-RHLA. One of the two homeworkers did return to the designated meeting place on March 5, 2018, and has resumed receiving work assignments from Konffetty-RHLA. The other worker has not attempted to resume receiving embroidery assignments from Konffetty-RHLA, and informed the WRC that this is due to her fear of continued mistreatment by the Konffetty-RHLA representative.

Although VLF informed the WRC that Konffetty-RHLA would provide both workers with compensation for their loss of income during the period when they were not being assigned work, to date, no such compensation has been paid. In May 2018, VLF informed the WRC that Konffetty-RHLA was unwilling to implement the corrective actions to which it had previously agreed, including, apparently, payment of compensation to these two workers.¹⁰⁹

In July 2018, the WRC received reports that Konffetty-RHLA, in 2016, had previously terminated and/or refused to rehire three other homeworkers in retaliation for their association with Mujeres Transformando.

iii-iv. Discrimination in assigning work on account of associational activities and threat of elimination of work for lodging complaint with WRC

VLF informed the WRC in June 2018 that, as a result of the alleged “impossibility of satisfying [the] WRC’s requirements” (i.e., that Konffetty-RHLA comply with Salvadoran law and university codes of conduct), Konffetty intended to reduce or cease entirely the assignment of embroidery work to homeworkers.¹¹⁰ In response, the WRC notified VLF that such actions would constitute retaliation against the homeworkers for having lodged a labor rights complaint with the WRC. The WRC strongly urged VLF to require Konffetty-RHLA to refrain from any such action, but, to date has received no indication from VLF that this threat has been withdrawn.

6. Failure to Register Homeworkers with the Salvadoran Ministry of Labor

a. Findings

El Salvador’s Labor Code requires employers to register with the Salvadoran Ministry of Labor the names and wage rates of all homeworkers they employ.¹¹¹ However, none of the Konffetty-RHLA homeworkers whom the WRC interviewed have been registered with the Ministry of Labor. Konffetty and RHLA’s failure to register homeworkers with the Ministry of Labor violates Salvadoran law and, by extension, university codes of conduct.

b. Recommendations for Corrective Action

The WRC recommends that Konffetty and RHLA comply with the requirements of El Salvador’s Labor Code by immediately registering the names and wage rates of all of its homeworkers with the Salvadoran Ministry of Labor and maintain an accurate record of such registrations going forward.

c. Response of Licensee and Current Status

As discussed, VLF has asserted that, as a result of the formal language in the homeworkers’ contracts with Konffetty and RHLA, these workers are not and have never been employed by

¹⁰⁹ Sandler, Travis & Rosenberg (May 17, 2018), *supra*, n. 5.

¹¹⁰ Sandler, Travis & Rosenberg (June 13, 2018), *supra*, n. 4.

¹¹¹ Labor Code, Article 72.

either Konffetty or RHLA, but instead are “mercantile ... provi[der]s of services.” As a result, VLF further claims, the homeworkers are not entitled to any of the protections afforded to homeworkers under Salvadoran law, including that of being registered with the country’s labor ministry.

As also discussed, the WRC has examined VLF’s claims and found them to not only be inconsistent with El Salvador’s Labor Code, but to also constitute, on the part of Konffetty-RHLA, an instance of unlawful fraud. As the WRC has explained to VLF, Salvadoran law is clear that all homeworkers should be registered with the Salvadoran government. However, VLF has refused to require Konffetty-RHLA to comply with this requirement.

IV. Conclusion and Current Recommendations

As noted, both the violations of university codes of conduct in this case – particularly in the area of the underpayment of wages – and the resistance to remedying these violations that the WRC has encountered on the part of VLF and Konffetty-RHLA are some of the worst that the WRC has found to date in the production of university-licensed apparel. This case is particularly notable in that not only have workers involved in producing collegiate apparel been paid only a small fraction of what they are legally owed, but also the university licensee and its supplier factory have attempted to deny that these workers are even subject to the country’s labor laws at all. The WRC does not recall any prior instance where either of these elements was found with respect to any other licensee.

Neither Salvadoran law nor university codes of conduct permit factory owners to avoid their obligations under the country’s labor laws to the workers who make their products simply by designating those workers under a different title. Such attempts to use formal designations for workers to strip them of legal protections are not permissible under the labor laws of El Salvador in the same way that such misclassifications of workers are also prohibited under U.S. labor law. In both cases, the laws make clear that employment relationships are established based on the actual dealings between companies and workers, not on what title the former may bestow on the latter.

The WRC recognizes, however, that both the changes in the treatment of the homeworkers and the provision to these workers of compensation for prior violations that are required for VLF and Konffetty-RHLA to come into compliance with Salvadoran labor law and university codes of conduct, are likely to pose significant challenges for these companies. Therefore, it will be crucial going forward for VLF and Konffetty-RHLA to cooperate with the WRC and with Mujeres Transformando to develop and implement a detailed remediation plan.

The WRC believes that successful remediation of past violations of and effective ongoing compliance with university codes of conduct is achievable in this case should a good faith commitment to do so be made by VLF and Konffetty-RHLA. The WRC has found no evidence to indicate that achieving these goals requires Konffetty-RHLA to cease or reduce use of homeworkers for embroidery work. Indeed, as discussed, taking such an action in response to the WRC’s findings and recommendations for remediation would constitute a further violation of workers’ rights.

The WRC therefore reiterates the recommendation that VLF and Konffetty-RHLA, instead, work constructively with the WRC and Mujeres Transformando on the development and implementation of a corrective action plan.

The WRC recognizes that it may be possible, that, given the large amounts of compensation estimated to be owed to the homeworkers (*See, Table 2*), VLF and Konffetty-RHLA do not possess the resources, at

present, to pay workers all of the funds they are due. If this is demonstrated to be the case, then, in the interest of workers, it may be necessary to discuss a lesser amount of compensation or payment of compensation over an extended period of time, provided such an arrangement is deemed acceptable by the homeworkers, in consultation with Mujeres Transformando. However, even if there is proof of lack of capacity on VLF and Konffetty-RHLA to pay the full amount owed to the homeworkers, there is no question that VLF and Konffetty-RHLA have the capacity to provide workers with substantial compensation.

Determining VLF and Konffetty-RHLA's capacity to pay this compensation to workers, as well as reaching the best possible estimate of the total amount owed to workers, will require the companies to cooperate with the WRC by sharing the information necessary to make the necessary calculations. For example, the WRC does not know the exact number of homeworkers who have performed embroidery work for Konffetty-RHLA over the period for which compensation is due.

It may be that additional information from Konffetty-RHLA, concerning the number of homeworkers who have performed embroidery work during the period in question or other relevant data will show that the amount owed is somewhat less (or somewhat more) than the WRC's current estimates. Unless VLF and Konffetty-RHLA will discuss these matters cooperatively and share relevant information with the WRC, there will be no credible basis for identifying a different figure for the total owed to workers than the one generated by the WRC's estimates of the average compensation due per worker and the number of workers affected.

The WRC continues to urge VLF and Konffetty-RHLA to engage cooperatively and in good faith with the WRC and with Mujeres Transformando, as an advocate for the rights and welfare of the homeworkers, in order to develop a plan for provision of such compensation and other elements of a comprehensive remediation program. Such a constructive approach is a clear necessity if VLF as a licensee and Konffetty-RHLA as its supplier are to come into compliance with university codes of conduct.

Category of Violation	Average Amount Due To Each Worker
Nonpayment of Minimum Wage	\$4,150
Nonpayment of Overtime Wages	\$2,430
Compensable Waiting Time	\$187
Underpayment of Annual Bonuses	\$134
Non-contribution to Healthcare and Retirement Programs	\$1,170
Non-provision of Annual Leave	\$239
Total Compensation Due	\$8,310

Table 2: Estimated Average Compensation Due to Each Homeworker