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**WORKER RIGHTS
CONSORTIUM**

WORKER RIGHTS CONSORTIUM ASSESSMENT SMC, S.A. (DOMINICAN REPUBLIC)

FINDINGS AND RECOMMENDATIONS

April 3, 2019

I. Introduction and Executive Summary

A. Introduction

This report details the findings and recommendations of the Worker Rights Consortium’s (WRC) June – August 2018 investigation concerning labor practices at SMC, S.A. (“SMC”), an apparel manufacturing facility located in the Dominican Republic. The WRC undertook this compliance assessment of SMC pursuant to the WRC’s role as the independent monitor for the City and County of San Francisco, California (“the City”) under the City’s Sweatfree Contracting Ordinance (“Ordinance”) which sets labor rights standards for manufacturers of apparel supplied to the City by the City’s vendors.¹

SMC was identified as a subcontractor to the Cincinnati, Ohio-based uniform company, Fechheimer Brothers Company (“Fechheimer,” a division of Berkshire Hathaway, Inc., the investment-holding firm headed by Warren Buffett), for the manufacture of garments supplied by Fechheimer to the City vendor, Galls, Inc. (“Galls”), for the manufacture of uniforms supplied by Galls to the City of San Francisco Sheriff’s Department (“SFSD”). As a result, labor conditions at SMC are required to meet the standards established for producers of apparel supplied to the City under the Ordinance as a term of Galls’ contract with the City to supply uniforms for the SFSD.

SMC is located in a 20,000 square foot building in the Zona Franca Industrial La Vega (La Vega Free Trade Zone) in La Vega Province, which is in the central part of the Dominican Republic. At the time of the WRC’s visit to SMC in August 2018, the factory employed roughly 250 persons, including office and management personnel. SMC is a cut-and-sew apparel assembly facility that chiefly produces uniform shirts and other tops from synthetic and blended materials. The WRC previously inspected SMC for the City in 2013 and, as discussed further below, found a number of violations of the Ordinance for which the WRC provided recommendations for corrective action to the factory’s management.² The current report includes findings regarding the extent to which the factory has or has not implemented those recommendations.

The WRC’s 2018 assessment of SMC was conducted by the WRC’s Central America and Dominican Republic representative, with the assistance of health and safety specialist, Mariano Kramer, a certified industrial hygienist, and the Fundación Laboral Dominicana (Dominican Labor Foundation) (“FLD”), a nongovernmental organization based in the Dominican city of Santiago. The WRC’s representatives and Mr. Kramer, the health and safety specialist, inspected the factory on August 14 and 15, 2018, and reviewed those records which SMC management made available for onsite examination. FLD, under the WRC’s supervision, conducted in-depth offsite interviews with SMC workers.

¹ *Codified as*, San Francisco, Cal., Administrative Code (“City Code”), Chapter 12.U (as amended, Feb. 11, 2010), <https://sfgov.org/oca/sites/default/files/Chapter12U.pdf>.

² WRC, “SMC, S.A. (Dominican Republic) Findings and Recommendations” (Sept. 28, 2013) (on file with WRC).

B. Summary of Findings

The City's Ordinance requires manufacturers of apparel supplied to the City to comply with all applicable domestic labor and employment laws of the country where manufacturing occurs, as well as certain additional labor standards including payment of a non-poverty wage and specific protections for the rights of women workers.³ The WRC's 2018 assessment of SMC identified noncompliance with the Ordinance's requirements in the following areas, the majority of which are areas where the WRC had also found identical or similar instances of noncompliance during the 2013 inspection:

- *Working Hours* – including a daily schedule that continues to exceed the maximum hours permitted under Dominican law; a daily rest period that is only half as long as the law requires; unlawful mandatory overtime; and failure to offer workers who are breastfeeding infants legally required break time for this purpose;
- *Wages* – pay rates equaling less than half the City's non-poverty wage standard and also, potentially, below the much lower local minimum wage, as well as nonpayment of premium rates for overtime;
- *Benefits* – under-provision of legally required annual leave;
- *Harassment* – verbally abusive treatment of workers by supervisors and managers;
- *Freedom of Association* – an atmosphere of fear of retaliation among employees for exercising associational rights; and
- *Health and Safety* – numerous violations, including in the areas of fire safety; personal protective equipment; ergonomics; hazardous materials; excessive temperatures; electrical safety; machine guarding; potential asbestos exposure; maintenance of restrooms; health and safety training; and the factory's health and safety committee.

³ See, City Code, Ch. 12.U.2 (j) (defining "Sweatshop Labor" as "work performed by any Worker under terms or conditions that seriously or repeatedly violate laws of the jurisdiction within which the work is performed governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without limitation exposure to hazardous or toxic substances; (iv) labor, including without limitation collective bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation, including without limitation all laws prohibiting workplace and employment discrimination; (vii) freedom of association; or (viii) building or fire codes. . . [or] any work performed by any person contributing to the provision of Goods to the City and County under a Contract or Subcontract that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child Labor or Slave Labor.") and 12.U.3. (a) ("Each Contractor and Subcontractor, regarding any Worker, shall comply with all human and labor rights and labor standards imposed by treaty or law on the country in which the Goods are made or assembled, and shall not engage in Sweatshop Labor."), (b) (requiring payment of non-poverty wages), (g)-(i) (prohibiting mandatory overtime, harassment and mandatory pregnancy testing or use of contraception).

The violations of the City's Ordinance identified above, as well as the methodology by which the WRC reached these findings, are discussed in further detail in the body of this report. For each finding, the report also provides recommendations for how the identified violation can be remedied and/or corrected going forward.

C. Responses of Vendor and Manufacturer and Non-Response of Factory Owner

In December 2018 the WRC provided SMC, Fechheimer and Galls with a draft copy of this report and requested the companies' responses to the WRC's findings of violations of the City's Ordinance and recommendations for corrective action. To date, the WRC has not received any response to this report from the management of the SMC factory.

With respect to Fechheimer and Galls, the sole response WRC received to the findings in this report was a message from Fechheimer, that was forwarded to the WRC by Galls in January 2019, in which Fechheimer stated that the products that had been produced for the City at SMC were currently being produced by a different supplier factory and that Fechheimer, furthermore, intended to cease doing business entirely with SMC in the near future. With respect to the WRC's findings of violations of the City's Ordinance and recommendations for corrective action, Fechheimer stated simply, without further details, that it had "urged SMC management to continue to work on improving the operation, and to use the WRC audit as reference."

The WRC finds the complete absence of a response from SMC and the cursory nature of the response received from Fechheimer and Galls to be highly troubling. As noted, SMC has been aware of many of the violations discussed in this report and the necessary corrective actions since the WRC's prior inspection of the factory in 2013, but, as detailed in this report, has done little to address most of them or improve its labor practices overall. Fechheimer was aware of the WRC's 2013 inspection of the facility as well, and continued to place orders for garments from the factory, including for products supplied to the City under the current SFSD contract, but did not require the necessary corrective measures to be implemented.

The violations identified by the WRC in this report include significant instances of underpayment of legally owed wages and non-provision of statutory benefits, which have resulted in the loss to the workers at SMC of substantial compensation. The ongoing failure of SMC, Fechheimer and Galls to address these violations in a substantive manner, by ensuring corrective action, along with Fechheimer's impending cessation of business with the factory, mean that these workers have been made the victims of an ongoing wage theft, for which there is currently little prospect of remediation.

The WRC continues to urge SMC, Fechheimer and Galls to collaborate to ensure that the violations of the City's Ordinance discussed in this report are corrected and remediated.

II. Methodology

In June through August 2018, the WRC conducted in-depth research focused on labor conditions at SMC, including extensive offsite worker interviews by FLD, and an onsite

factory inspection on August 14 and 15, 2018, which was performed by the WRC's Central America and Dominican Republic representative with the assistance of health and safety specialist Mariano Kramer.

The WRC's assessment included 23 interviews with current factory employees. In accordance with the WRC's standard investigative methodology, these interviews were conducted away from the factory site in locations where workers felt comfortable speaking with researchers. During the August 14-15, 2018 factory inspection, the WRC representative and the health and safety specialists also interviewed SMC managers and supervisors and members of the factory's health and safety committee.

The WRC also reviewed certain company documents that were made available by SMC management on the day of the factory visit, including some payroll records, company policies, social security records, and health and safety records. The WRC notes that SMC's management *did not* fully cooperate with the WRC's investigation, as the company provided only limited opportunity to review documents requested by the WRC.

Finally, the WRC's assessment also included a review of Dominican labor laws and regulations implicated by the conditions found at SMC, including research concerning the application of these standards. The WRC's findings based on this evidence and research, and recommendations for corrective action, are outlined in the following section.

III. Findings and Recommendations

This section details the WRC's findings of noncompliance with the City's Ordinance at the SMC factory and, for each finding, provides corresponding recommendations for remedying the violation and ensuring compliance with the relevant terms of the Ordinance going forward.

A. Working Hours

Most of the employees interviewed for this assessment reported regularly working Monday through Friday from 7:45 a.m. to 5:00 p.m., except on Fridays, when their regular work hours end at 4:00 p.m. Some employees, however, reported starting work earlier each day, at 7:30 a.m. During the workday, employees receive a 30-minute meal break from 12:00 to 12:30 p.m., which is not included in their working hours. Employees also reported that on occasion they work additional hours after their regular workday.

1. Excessive Work Schedule, Involuntary Overtime, and Inadequate Rest Period

a. Findings

i. Excessive Work Schedule

The length of the daily working schedule at SMC violates Dominican labor law and, therefore, by extension, the City's Ordinance. Dominican law limits the regular working

day, exclusive of overtime, to eight hours' duration.⁴ The regular working day at SMC, however, depending on whether employees begin work at 7:30 a.m. or 7:45 a.m. is 8.75 to 9.00 hours long on Monday through Thursday, which is in excess of the legal limit.

SMC management's justification for this schedule is that it permits employees to perform the 44-hour workweek that is standard under Dominican law, without the company requiring them to work on Saturday. However, as discussed below, under Dominican law, the company is free to only require employees to work on Mondays through Fridays, and, moreover, to permit employees to work 44-hours during this five-day period.

What Dominican law requires, though, is that if the company wishes to make this schedule available to employees, as discussed below, the company must compensate all working hours beyond eight hours in a single day as overtime, and allow employees to decide, voluntarily, whether or not they wish to perform this additional work.⁵ By imposing this schedule on employees as their mandatory regular working hours SMC is violating Dominican law and, by extension, the City's Ordinance.

ii. Involuntary Overtime

As noted, Dominican labor law requires that any hours worked by employees beyond eight hours in a single day must be considered overtime, which must be performed voluntarily on the part of employees.⁶ SMC's management acknowledges that it requires employees to work the company's current daily schedule, which, as discussed, exceeds eight hours per day of work, as a condition of employment, thereby violating this legal requirement.

SMC's management claims that the factory's current schedule was agreed to voluntarily by the first employees who were hired by the company, when the factory opened more than 10 years ago. In the WRC's 2013 inspection, however, SMC's management acknowledged that this schedule was adopted by the company without any formal or written consent from workers and subsequently, has been presented to workers as a condition of employment.

Therefore, this putative historical precedent does not satisfy the legal requirement that any overtime worked currently by the factory's present employees must be performed voluntarily.⁷ Because SMC's management has made performing overtime a condition of

⁴ Dominican Labor Code ("Labor Code"), Article 147 ("The normal length of the work day . . . cannot exceed eight hours per day or forty-four hours per week.).

⁵ *Id.*, Arts. 147 and 203 ("Overtime work is to be performed voluntarily, except in the case of extraordinary circumstances which threaten the normal functioning of the company or the safety of workers.") (unofficial WRC translation). The City's Ordinance also requires that overtime be performed voluntarily, yet this restriction only applies to overtime that causes employees to work in excess of 48 hours per week. *See*, City Code Ch. 12.U.3.(g). However, as this practice violates Dominican law's broader restriction on involuntary overtime, it violates the Ordinance's requirement of compliance with local labor laws. *See, id.* at Ch. 12.U.2.(j) and 12.U.3.(a).

⁶ Labor Code, Art. 203.

⁷ *Id.*

employment, for all workers currently employed at the factory, the company is violating the prohibition on involuntary overtime under Dominican labor law and, by extension, the City's Ordinance.

Finally, with regard to the additional hours of overtime, outside of their regular work schedules, that employees reported performing, SMC's managers told the WRC that these additional overtime hours are voluntary, and that employees are asked if they can work extra hours or are given the opportunity to volunteer for such hours by signing a form. However, while some of the employees who were interviewed away from the factory affirmed that they worked these extra hours voluntarily, other workers reported that they had been threatened that they would be dismissed if they did not agree to do so, a practice that violates Dominican law, and, by extension, the City's Ordinance as well.⁸

iii. Inadequate Rest Time

Dominican labor law mandates that workers receive a daily one-hour unpaid meal break.⁹ The daily meal break provided to workers at SMC, however, is only 30 minutes in length, which violates the labor law and, by extension, the City's Ordinance.

SMC management's justification for this practice is, similarly, that it permits employees to have a shorter total workday than if they were permitted a one-hour break. However, as discussed, the length of the workday at SMC is a function of the additional time beyond the eight-hour day that SMC unlawfully requires to work employees to work¹⁰ on a daily basis. If SMC were to simply comply with the law, by treating this additional time as overtime, which employees must be able to voluntarily decide whether or not to work, then workers could receive the legally required one-hour break without lengthening their mandatory work day.

b. Recommendations

The WRC recommends that, in order to comply with the City's Ordinance and Dominican law, SMC should:

- Limit its mandatory daily working schedule to no more than eight hours;
- Adopt, maintain, and inform all supervisors and managers of an explicit policy that, going forward, performance of work beyond eight hours in day must be voluntary on the part of employees and that no employee shall be discriminated against in any way for declining to perform overtime;
- Inform employees that they are not required by the company to work for any time in excess of eight hours in a day, and that any work in excess of eight hours in a

⁸ Id., also City Code Ch. 12.U.3.(a), (g) and (j).

⁹ Labor Code, Art. 157 ("The work schedule should be interrupted for a rest intermission, which can be no less than one hour, after four consecutive hours of work and an hour and a half after five hours.").

¹⁰ Id., Arts. 157 and 203.

day – that is authorized by the factory and that employees may choose voluntarily to perform – will be compensated to the employees at the required premium overtime rate;

- Remove from employees’ files and expunge any form of discipline applied because of employees’ refusal to perform overtime, and inform employees in writing when this is done;
- Continue the practice of when overtime is requested of employees by company managers obtaining the signature of employees on a record in which the employee can state whether or not that the overtime is worked voluntarily and maintain such records for inspection by auditors, inspectors, and buyers;
- Provide all employees with a daily 60-minute rest period; and
- If SMC would like to implement an alternative work schedule, discuss with employees and arrive at a weekly work schedule that is acceptable to company management and employees (as confirmed by vote of a majority of the nonsupervisory workforce) *and* consistent with the requirements of Dominican labor law, with respect to: (1) the length of the meal period, (2) the duration of the regular workday, (3) the voluntary nature of all additional time worked, and (4) the payment of the legally required premium rate for such additional time.

Following the WRC’s 2013 inspection of the factory, the WRC previously communicated the same recommendations to SMC’s management. During the August 2018 inspection of the factory, SMC confirmed to the WRC that it had not implemented these earlier recommendations.

2. Failure to Offer Paid Lactation Breaks for Workers who are Breastfeeding

a. Finding

Dominican labor law establishes that workers who are nursing mothers have the right to three daily 20-minute paid breaks during the workday for the purpose of breastfeeding.¹¹ In the WRC’s 2013 assessment, workers who had given birth while employed at the factory said that they did not receive and were not aware of this statutory benefit. In the WRC’s 2018 assessment, the factory’s management acknowledged that no worker at the factory has ever used this benefit.

Instead, when interviewed for this assessment, SMC’s management attempted to justify its failure to offer this benefit to workers on the ground that, in actuality, when employees return to work from maternity leave, they already have ceased nursing their babies and therefore are not legally eligible for the paid lactation breaks. The company’s failure to inform workers of this benefit, however, contributes significantly to this result.

¹¹ Id., Art. 240.

It is predictable that, if employees who are expectant mothers are unaware of the availability of paid lactation breaks on their return to the factory from maternity leave, they will be more likely to cease breastfeeding in preparation for resuming work after finishing their maternity leaves. Because SMC management's failure to inform workers of their right to paid lactation breaks *de facto* restricts workers' access to this legally mandated right, the company's practice in this area fails to ensure compliance with Dominican law, and, by extension, the City's Ordinance.¹²

b. Recommendation

The WRC recommends that, in order to comply with the City's Ordinance and Dominican law, SMC should inform all employees on a periodic basis, and all expectant mothers, prior to the beginning and immediately after the end of their maternity leaves, of their right, if they are breastfeeding, to take paid breaks during the workday for this purpose.

B. Wages

Workers interviewed for this assessment reported being paid base wages, exclusive of production bonuses, that ranged between 2,000 and 2,308 Dominican pesos (RD\$) or US \$42.50 – 49.00 at current exchange rates (RD\$ 47.10 per US \$1.00), for a 44-hour workweek. The majority of the employees who were interviewed reported that, for working 44 hours per week, they receive a weekly wage of RD\$ 2,100 (US \$44.59), which is the equivalent of their being paid RD\$ 47.72 (US \$1.01) per hour or RD\$ 9,100 (US \$193.21) per month.

SMC's management claimed to the WRC that all workers were paid no less than RD \$ 2,309 (US \$49) per week. However, SMC's factory management restricted the WRC's access to review the company payroll records. SMC's management did not provide the WRC with payroll records for the dates that the WRC requested, but instead provided payroll information for a different pay period. SMC also only permitted the WRC's representative to review the latter documents for 15 minutes, which was an insufficient period of time to assess these records. The WRC was, therefore, unable to accept the management's unverified claims regarding its pay practices.

As a result, the WRC's findings on this issue are based on workers' testimony in offsite interviews. As workers' testimony on this issue was generally consistent, with the majority of workers receiving the same base wage, this evidence was sufficient for the WRC to reach findings in this area with respect to SMC's noncompliance with Dominican labor law and the City's Ordinance.

¹² Ibid.

1. Failure to Pay Minimum Wages

a. Findings

i. Failure to Guarantee Payment of the Legal Minimum Wage to all Workers

In nearly all cases, the base wages that the SMC workers interviewed for this assessment reported being paid, which for the majority of employees was the equivalent of RD\$ 9,100 (US \$193.21) per month, fell below the legal monthly minimum wage for employees in the country's free trade zones (which include the La Vega Free Trade Zone where SME is located), which is currently set at RD\$ 10,000 (US \$212.30).¹³ Fewer than 10% of the workers who were interviewed reported earning a higher monthly base wage (RD\$ 10,031 or US \$212.98) that was barely above this legal minimum.

While SMC management claimed that all workers at the facility received the legal minimum, the company did not provide the WRC with documentary evidence to verify this claim. As many workers' base wages are below the legal minimum, the factory's compliance with the minimum wage is contingent on workers receiving production bonuses to bring their pay above this standard. However, as the factory does not guarantee that it will pay workers the minimum wage if they do not meet the quotas necessary to earn these bonuses, it does not ensure compliance with the minimum wage.

ii. Failure to Pay the City of San Francisco's Minimum Non-Poverty Wage

The average base wages SMC employees reported receiving for regular working hours provide less than half of the "non-poverty wage" rate which is required to be paid under the City's Ordinance.¹⁴ Although workers can also earn production bonuses, the Ordinance clearly states that the non-poverty wage requirement applies to the "minimum wages" payable to employees, suggesting that these bonuses, whose payment is not legally guaranteed to employees, should not be counted toward compliance with this standard.

The City's non-poverty wage standard for manufacturers of apparel for the City in the Dominican Republic is a minimum rate of US \$2.46/hour.¹⁵ As discussed above, however, the majority of SMC workers who were interviewed by the WRC reported receiving a base wage that is the equivalent of only US \$1.01 per hour – slightly more than 40% of the City's non-poverty wage. The WRC found a similar level of noncompliance at the factory in 2013, when the WRC's finding was that the facility's base wage provided only 35% of the non-poverty wage.

¹³ See, Comité Nacional de Salarios, Resolución No. 14/2017 (Sobre Salario Mínimo Nacional para los Trabajadores de las Zonas Francas Industriales), available at: <http://www.omlad.gob.do/ResolucionesSalariales.aspx>.

¹⁴ See, City Code Ch. 12.U.3.

¹⁵ See, City and County of San Francisco, *Sweatfree Contracting Ordinance (Administration Code Chapter 12. U), Current Wage Rates for Overseas* (2018), https://sfgov.org/olse/sites/default/files/Document/2018_Wage%20Rates%20International_0.pdf.

b. Recommendations

The WRC reiterates its recommendations – which were originally made in 2013, but, as SMC management has acknowledged were not implemented – that the following steps be taken to remedy SMC’s noncompliance with the City’s non-poverty wage requirement, and, additionally the Dominican minimum wage:

- Increase workers’ base weekly wages, exclusive of production bonuses,¹⁶ by amounts sufficient to provide a pay rate that complies with the City’s non-poverty wage requirement for the Dominican Republic, and also, therefore, the legal minimum wage;
- Provide workers with back pay for the period of time from the date when the City’s non-poverty wage requirement became applicable to the factory’s employees (or the relevant statute of limitations) up to the date when wages are increased to a sufficient degree to meet this standard, in amounts equivalent to the difference between the wages actually paid to employees and the amounts workers would have been paid had the factory complied with the non-poverty wage requirement at that time.

Should payment of such back wages and/or the non-poverty wage going forward not be financially feasible for SMC, the WRC recommends that Fehheimer and Galls assist SMC in achieving remediation of the prior violation of, and future compliance with, this standard.

2. Underpayment of Overtime

a. Findings

Under Dominican labor law, any time beyond eight hours that employees work in a single day must be compensated as overtime, at 135% of employees’ ordinary rate of pay.¹⁷ Interviews with workers at SMC, however, who, on Mondays through Thursdays, have a workday of 8.75 – 9.0 hours exclusive of their 30-minute meal break, indicate that the factory pays them for this additional time at workers’ regular rate, rather than at the premium rate required by local law, and, by extension, the City’s Ordinance.

As noted, SMC’s management claims that this extended schedule was agreed to voluntarily by the first employees who were hired by the company, when the factory opened more than 10 years ago. In the WRC’s 2013 inspection, however, SMC’s management acknowledged that this schedule was adopted by the company without any formal or written consent from workers and subsequently, has been presented to workers as a condition of employment. As a result, the additional hours that employees work must be treated as daily overtime, rather than as part of a duly-established alternative workweek.

¹⁶ City Code, Ch. 12.U.3.(b).

¹⁷ Labor Code, Art. 203.

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law and the Ordinance in the area of payment for overtime:

- Compensate employees for all hours worked in excess of eight hours in a single day at the legally required overtime rate of 135% of the employee’s regular rate of pay;
- Provide back wages to employees in the amount of the legally mandated premium compensation for overtime hours (35% of employees’ ordinary rate of pay) that the company should have paid employees for working an additional 45 – 60 minutes per day, four days per week, beyond the maximum regular daily working hours. Such back-pay should be provided for the period of time from the date when the practice is corrected backwards to the worker’s date of hire or the statutory limit for such claims, whichever is shorter in duration.

C. Paid Time Off from Work

1. Annual Leave and Statutory Holidays

a. Findings

Dominican labor law requires employers to provide workers whom they have employed for more than one year, but fewer than five years, with 14 days of paid annual leave (vacation). For workers who have been employed for more than five years, the law requires them to be provided 18 days of such leave.¹⁸ The labor law also mandates, separately, that employers provide workers with paid rest days for observance of national holidays, including Christmas Day and New Year’s Day.¹⁹ Finally, the law also states explicitly that the right to vacation “cannot be the object of any substitution.”²⁰

SMC employees who were interviewed for this assessment indicated that they receive annually and are paid for the either 14 or 18 days off from work, which SMC schedules to fall over the Christmas and New Year’s Day public holidays. However, as SMC is legally required to provide workers with paid days off on these two public holidays, separate and apart from its obligation to provide employees with paid vacation, the company is, in effect, providing workers with, depending on their seniority, only 12 or 16 days of paid vacation, respectively – two days fewer than the law requires – by “substitut[ing]” public holidays for vacation days. This failure to comply with national law violates the terms of the City’s Ordinance as well.²¹

¹⁸ Id., Art. 177.

¹⁹ Id., Art. 165.

²⁰ Id., Art. 182.

²¹ City Code, Ch. 12.U.2.(j), 12.U.3.(a).

SMC's management attempted to justify this practice by citing that the other factories that are located in the La Vega Free Trade Zone also follow the same annual practice, and claimed that it was the Labor Code that is "incorrect" on this point. Needless to say, SMC has no authority to overrule the Dominican labor laws – and, by extension, the City's Ordinance – as "incorrect," rather than comply with their requirements. Moreover, simply because other employers in the same area have adopted a practice that violates the law, does not make that practice legal.²²

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law and the Ordinance in the area of annual leave and paid holidays:

- Provide workers with their full annual complement of either 14 or 18 legally required vacation days, depending on length of service, and the full number of paid holidays that the law requires, refraining from counting the days of the Christmas and New Year's Day holidays as among workers' days of annual leave;
- Provide compensation to employees in the amount of their regular daily wages for the number of days of annual leave they have lost on account of the company's practice of treating the Christmas and New Year's Day holidays as part of their days of annual leave.²³

D. Harassment and Abuse

1. Findings

Both Dominican labor law and the City's Ordinance prohibit any form of abuse of workers, including verbal mistreatment.²⁴ About half of the workers interviewed by the WRC reported that managers and or supervisors at the SMC factory were verbally abusive at times towards employees.

²² Unfortunately, pervasive and consistent violation of certain provisions of labor law by employers in a given geographic area is far from uncommon in the global garment industry *See, e.g.*, Randal C. Archibold and Steven Greenhouse, "Group Says Haitian Garment Workers Are Shortchanged on Pay," *New York Times* (Oct. 15, 2013) (citing reports of factories in Haiti uniformly failing to pay legal minimum wage), <https://www.nytimes.com/2013/10/16/world/americas/group-says-haitian-garment-workers-are-shortchanged-on-pay.html>.

²³ The amount of compensation to be paid is two days' wages per year of service completed with the company, and should be provided for the period of time backwards from the date when the practice is corrected backwards to the worker's date of hire or the statutory limit for such claims, whichever is shorter in duration.

²⁴ Labor Code, Article 46 (8) ("The obligations of the employer include: ... (8) to treat workers with due consideration abstaining from mistreatment by word or by deed."); City Code, Ch. 12.U.3.h ("No Contractor or Subcontractor shall subject any Worker to any physical, sexual, or other illegal harassment or abuse...").

Specifically, employees reported that managers “shout” at workers and said that both managers and supervisors were “verbally abusive.” SMC managers and supervisors, and some workers, denied that such misconduct occurs, however, they acknowledged that the factory does not have a written policy addressing this issue (although a sign is posted inside the factory that simply states that verbal and sexual abuse are not tolerated).

Nevertheless, the testimony from workers indicating that such verbal abuse occurs was consistent and mutually corroborative, leading the WRC to conclude that the company is failing to comply with the law, and the City’s Ordinance, in this area. Simply posting signs inside a workplace prohibiting misconduct is ineffectual when those individually responsible for the mistreatment are those in authority.

2. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law and the Ordinance in the area of harassment and abuse:

- Adopt a formal written policy prohibiting all forms of verbal abuse, and inform all employees, supervisors, and managers of this policy through verbal announcement; and
- Discipline any supervisor or manager found to engage in verbally abusive treatment of employees.

E. Freedom of Association

1. Findings

Both the Dominican Constitution and the country’s labor law prohibit employers from retaliating against or otherwise using their influence to restrict workers’ exercising the right to join a union.²⁵ Moreover, under the City’s Ordinance, SMC is required to “demonstrate commitment to best practices and continuous improvement in management practices to eliminate Sweatshop Labor, including the right to freedom of association and collective bargaining,” and to refrain from “subject[ing] a[ny] Worker to harassment, intimidation or retaliation as a result of his or her efforts to freely associate or bargain collectively.”²⁶

Workers at SMC told the WRC that they believed that the factory’s management does not respect their right to join a union, and that they would face retaliation if they sought to exercise this right. Some SMC employees who were interviewed said that they would be

²⁵ Constitution of the Dominican Republic, Article 47 (“It is prohibited for employers to: ... [use their] influence to restrict the right of workers to enter into or not enter into a union ...”); Labor Code; Labor Code, Article 333 (prohibiting employers from “[e]xercising retaliation against workers for their union activities [or] firing or suspending workers for belonging to a union...”).

²⁶ City Code, Ch. 12.U.3 (m).

terminated outright if they tried to join or form a union at the factory. In interviews with the WRC, workers also stated:

- “[SMC’s] managers would never allow for there to be a union [at the factory].”
- “One time, workers tried to form a union [at the factory], ... [but] the company would not accept it.”
- “The company’s attitude toward freedom of association is to reject it and to threaten workers with dismissal [if they seek to exercise it].”
- “There is no union [at the factory], the [factory’s] owner isn’t in agreement with [there being one].”
- “If [workers] try to form a union, they will threaten you with dismissal and tell you that the factory will close.”

The WRC did not document any recent incidents, however, where SMC management had actually retaliated or threatened to retaliate against workers for joining a union.

Nevertheless, the company has clearly given workers the impression that any exercise of associational rights would be met with retaliation. As a result, to comply with the requirement, under the City’s Ordinance, that the factory management “demonstrate commitment to best practices ... [with respect to] the right to freedom of association and collective bargaining,”²⁷ SMC must communicate affirmatively to employees that it will respect this right and refrain from such retaliation.

2. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law and the Ordinance in the area of harassment and abuse:

- Adopt a formal written policy stating explicitly that SMC respects workers’ rights to form, join, and participate in unions and will not retaliate or otherwise discriminate against employees for exercising this right;
- Inform all employees, supervisors, and managers of this policy through verbal announcement; and
- Discipline any supervisor or manager found to threaten or engage in discrimination or retaliation against employees on account of their having exercised associational rights.

F. Occupational Health and Safety

The WRC’s health and safety specialist, Mariano Kramer, inspected the factory and compared the current conditions to the findings of the WRC’s 2013 assessment of the

²⁷ Id.

facility. He noted that of the 29 health and safety deficiencies noted in the 2013 assessment, all of which violated applicable Dominican law concerning safety and health in the workplace²⁸ and, thereby, the City's Ordinance as well,²⁹ only 11 had been corrected and were no longer present at the time of the 2018 inspection.

In particular, the health and safety specialist observed that even in areas, such as guarding on machinery and electrical safety, where certain hazards that the WRC had identified in 2013 had been corrected, additional hazards of the same nature were present in 2018. The health and safety specialist expressed concern that the factory exhibited a reactive approach to occupational safety and health, and had failed to adopt practices that could identify and prevent additional hazards in the future – such as maintaining a functioning worker-management safety committee and organized programs for hazard communication, emergency evacuation, and addressing ergonomic and heat illness issues.

1. Fire Safety

a. Findings

Some workers interviewed by the WRC reported that some exit doors at the factory are sometimes locked during periods when employees are working inside the plant, a serious safety hazard.³⁰ Some of the employees interviewed offsite by the WRC also reported that certain exitways in the factory are often obstructed by cardboard boxes, a clear violation of Dominican safety standards.³¹ These hazards were not observed, however, at the time of WRC's subsequent inspection of the facility, although they may have been corrected in the interim, perhaps in preparation for the WRC's inspection.

The WRC's health and safety specialist found that, although SMC conducts annual fire drills at the facility, the factory lacks a formal written emergency action plan with an evacuation route map, a further violation.³² The health and safety specialist also found that SMC does not maintain a "hot work" permit system for managing any maintenance or construction work inside the facility involving welding or other flammable operations, as is also legally required.³³

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance in the area of fire safety:

- Ensure that all exit doors do not have devices that would permit them to be locked against egress by workers;

²⁸ Ministry of Labor, Reglamento 522-06 (Seguridad y Salud en el Trabajo) (Oct. 17, 2006); Resolución 04/2007.

²⁹ City Code, Ch. 12.U.2.(j), 12.U.3.(a).

³⁰ Reglamento 522-06 (Seguridad y Salud en el Trabajo) (Oct. 17, 2006), § 1.40.

³¹ Id.

³² Id. § 7.1.

³³ Id. § 6-8.

- Ensure that all exit ways in the factory are kept clear of cardboard boxes and other obstructions at all times;
- Adopt a formal written emergency action plan, including an evacuation route map, and ensure that fire drills train employees, supervisors, and managers in the use of this plan; and
- Establish and enforce a procedure for “hot work” that requires formal written permission before such operations can be conducted in the factory.

2. Personal Protective Equipment

a. Findings

With respect to each of the basic types of protective equipment required for work in a garment manufacturing facility – protective eyewear for sewing workers and other employees who are exposed to risk of eye injuries, protective gloves for workers exposed to risk from cuts or chemical exposures, and respiratory masks for workers exposed to air quality hazards – only a minority of workers interviewed by the WRC stated that they received the requisite safety equipment from the company.

During the inspection of the factory, the WRC’s health and safety specialist also confirmed that the factory does not provide protective eyewear, gloves, or respiratory masks for workers who handle corrosive chemicals and/or operate the factory’s grinding machine, a hazard that was also noted in the WRC’s 2013 assessment and violates Dominican safety regulations.³⁴

b. Recommendations

The WRC recommends that SMC prevent violations of Dominican labor law and the Ordinance in the area of personal protective equipment by providing protective eyewear, gloves, and/or respiratory to masks to all employees whose work exposes them to these hazards.

3. Ergonomics

a. Findings

i. Seating Hazards

The WRC’s health and safety specialist examined the chairs upon which the factory’s sewing machine operators sit (*See Figure 1*) and found that they are



Figure 1: Non-Ergonomic Unpadded Seating

³⁴ Id., § 5.2.

ergonomically inappropriate and fail to meet applicable regulatory standards.³⁵ Specifically, he observed that the chairs are too short and not vertically adjustable, and lack padding, with a seat pan and back that are made of bare plywood.

Although workers, themselves, have attempted to adjust the chairs, by placing objects on top of the seat pan to increase its height, and making improvised cushioning for the seat and back from leftover cloth, employees still described the chairs as “hard” and “uncomfortable.” Moreover, nearly half of the workers who were interviewed by the WRC reported that even these inadequate chairs were, themselves, in poor condition.

ii. Standing Hazards

SMC has failed to meet its legal obligation³⁶ to assess and address the ergonomic hazards faced by employees at the factory whose jobs involve inspecting, ironing, sorting, or packaging garments while working in a standing position throughout the day. (See Figure 2) Rather than installing anti-fatigue floor mats, which could address this risk, the company has provided thin mats, similar to kitchen mats, which are inadequate to address this hazard, at these employees’ work stations.

iii. Repetitive Motion Hazards

SMC also has failed to meet its obligation to assess and address the ergonomic hazards to employees whose jobs involve repeatedly attaching adhesive stickers on garments, which places these workers at risk of musculoskeletal injuries from repetitive motions. Contrary to Dominican law, to date, SMC has not conducted any assessment of the risks to workers from this ergonomic hazard.³⁷

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law and the Ordinance in the area of ergonomics:

- Provide all employees who work in a seated position for extended periods of time with ergonomic seating, specifically, chairs that are vertically adjustable with a padded seat pan, lumbar support, and armrests.



Figure 2: Standing Work on Bare Concrete Floor

³⁵ Id., § 1.2.

³⁶ Id., § 7.1.

³⁷ Id.

- Provide all employees who work in a standing position for extended periods of time with anti-fatigue floor-mats; and
- Conduct an ergonomic risk assessment of possible hazards from repetitive work attaching stickers to garments, and adopt any protective measures recommended as a result of this assessment.

4. Hazardous Materials

a. Findings

The WRC’s health and safety specialist found that the factory had corrected a number of risks that had been present at the time of the 2013 inspection with respect to storage and handling of hazardous materials. Specifically, the factory had:

- Installed secondary containment measures surrounding the diesel fuel tank for the factory’s backup generator in order to contain fuel spills;
- Ensured that containers of mineral oil had been properly labeled and stored with secondary containment in case of spills; and
- Ceased storing corrosive solutions next to combustible lubricants in the room that houses the factory’s air compressor.

However, the factory still did not maintain adequate systems for informing workers of health and safety hazards associated with chemicals in use at the facility and did not provide necessary eyewash facilities in areas of the plant where employees faced risks of being splashed with corrosive chemicals. Specifically, while the factory management now maintains a file of material safety data sheets (“MSDS”) for the chemicals in use at the facility – which was not the case at the time of the 2013 inspection – these are not stored in a location where they are readily accessible for review by workers, and employees have not been trained with respect to the information they contain, a result of the fact that the plant still does not have a hazard communication program – and therefore fails to meet the requirements of the City’s Ordinance and Dominican law.³⁸

In addition, contrary to accepted safety standards,³⁹ the factory does not provide adequate eyewash facilities in case of exposure to acid solutions that are used in the factory’s generator room for recharging batteries. The nearest eyewash equipment to the generator room is a bottle of eye rinse solution which is kept in the factory’s maintenance shop, which cannot be accessed from the generator room within ten seconds and thereby fails to meet safety standards. Finally, the bottle of eye rinse solution holds only sixteen

Figure 3: Inadequate Eyewash Station



³⁸ Id., § 9.

³⁹ Id., § 7.1.5.

fluid ounces, which would not provide a continuous flow of eye rinse for 15 minutes. (See Figure 3)

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law and the Ordinance in the handling and storage of hazardous materials:

- Adopt and implement a formal hazard communication program, which includes, but is not limited to, making accessible to employees the MSDS for chemicals in use in the plant and training employees on the contents of this information; and
- Install an eyewash station in the factory's generator room, with sufficient supply of eye rinse solution to provide a constant flow for at least 15 minutes.

5. Excessive Temperatures and Air Quality

a. Findings

Nearly 80% of the workers interviewed by the WRC reported that the temperature levels in the factory were uncomfortably high and that there is noticeable cotton dust in the air, despite the fact that the company has installed ventilation fans.

The WRC's safety and health specialist confirmed that the high temperatures in the workplace create a potential risk of heat stress and noted that the factory management does not regularly monitor temperatures in the plant or provide training in recognizing heat stress/stroke symptoms and taking emergency measures in response.

Members of the factory's safety committee acknowledged the impact of heat stress on workers at the plant, reporting that some employees have been sent for medical treatment after experiencing chest palpitations and weakness due to high temperatures in the facility. The safety committee members stated that, due to these illnesses, they had prevailed upon the factory management to acquire additional ventilation fans.

The WRC's safety and health specialist observed that while the factory supplies coolers of water in the workplace, it does not provide workers with drinking cups, and has not designated an area in the factory where employees experiencing heat stress may cool-down. The factory's failure to adequately address the high temperatures in the factory violates Dominican safety and health regulations.⁴⁰

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance in the area of indoor air quality:

⁴⁰ Id., § 1.1.5.

- Conduct periodic monitoring of temperatures and air quality in work areas; and
- Install the necessary engineering and administrative controls to prevent heat stress, improve air quality, and ensure worker comfort, including, but not limited to, providing drinking cups at all water stations and a ‘cool-down’ area for workers who experience heat stress.

6. Electrical Hazards

a. Findings

The WRC’s safety and health specialist observed a number of areas in the factory where electrical hazards that previously had been identified during the 2013 inspection subsequently had been corrected. The hazards that had been remedied included the previous use of bare spliced electrical conductors in certain areas, use of flexible electrical cords where permanent wiring was necessary, and lack of grounding on electrical circuits and outlets in multiple areas of the factory.

However, the safety and health specialist also noted that a significant number of other electrical hazards that violate Dominican safety regulations⁴¹ were still present in the plant. First, the factory’s maintenance shop continues to lack a fiberglass (i.e., non-conductive) ladder for mechanics to use when doing work with or in proximity to energized ceiling lighting.⁴² Moreover, inside the maintenance shop, itself, an electrical outlet runs through the junction box with metal-on-metal, and there is an electrical conduit which is broken with exposed conductors inside. (See Figure 4)



Figure 4: Unsafe Electrical Wiring in Maintenance Shop

Second, both the circuit breakers in the factory’s generator room and the control switches for the plant’s roof-mounted extraction ventilators were not labeled as to their purpose. Third, in the factory’s cutting department, power cords for the cloth-cutting machine have been spliced and wrapped with electrical tape, and now lack an outer protective sheath. (See Figure 5) Finally, several of the power cord outlets in this area were found to be ungrounded or have reversed polarity, both of which create a shock hazard.

⁴¹ Id., § 1.41.1.

⁴² Id. § 7.15.

b. Recommendations



Figure 5: Spliced and Inadequately Protected Wiring on Cutting Equipment

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance with respect to electrical hazards:

- Provide workers in the factory’s maintenance shop with a fiberglass (i.e., non-conductive) ladder for mechanics to use when doing work with or in proximity to energized ceiling lighting;
- Ensure that all electrical circuitry in the factory is properly insulated, grounded, and protected; and
- Label all circuit breakers and electrical switches in the factory as to their respective purposes.

7. Asbestos Exposure Risk

a. Findings



Figure 6: Boiler with Possible Asbestos-bearing Insulation

While, since the 2013 inspection, the factory has removed thermal insulation material – which potentially contains asbestos – from the top of the factory’s boiler system, the outlet pipe from the boiler is still wrapped in the same material. (See Figure 6) The WRC’s safety and health specialist found no evidence that the factory has ever tested the insulation material to determine whether it contains asbestos. Therefore, the same potential hazard and violation of safety standards still exists.⁴³

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance with respect to asbestos exposure:

- Remove thermal insulation material from the outlet pipe from the boiler; and
- Test the insulation material to determine whether it contains asbestos.

⁴³ Id., § 3.28.

8. Restrooms

a. Findings

Dominican law requires that factories provide, maintain and adequately supply at least one toilet for every 20 workers. While the number of toilets in the factory's men's bathroom complies with this requirement, the plant has only five toilets for the plant's 170-plus female employees, four less than the minimum legal number.⁴⁴ (See Figure 7)

Moreover, while on the day of the WRC's inspection of the factory the toilets were adequately stocked and maintained, some employees interviewed by the WRC reported that the restrooms are frequently unclean and lacking soap or paper towels.



Figure 7: Insufficient Women's Toilets

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance with respect to its restroom facilities:

- Add four additional women's toilets in order to meet the minimum legal standard;
- Ensure consistent cleaning of restrooms and restocking of soap and paper towels.

9. Machine Guarding

a. Findings

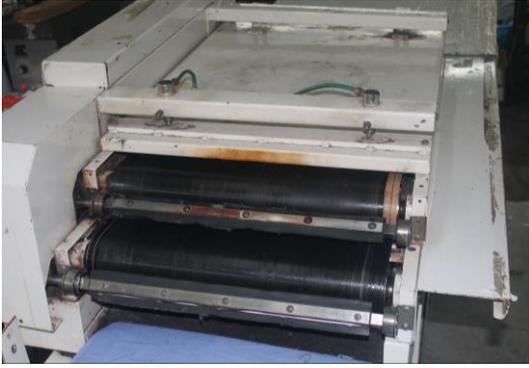
The WRC's safety and health specialist observed that certain hazards present in the factory due to lack of guarding on machinery had been corrected since the 2013 inspection. However, in many instances, adequate guarding still had not been installed on machinery, and these hazards, which violated Dominican workplace regulations,⁴⁵ continued to be present.

Insulation had been installed on the housing to the factory's steam ironing equipment to protect employees from burns. Moreover, some guarding had been added to cover the belt drives on the factory's boiler pump and air compressor (although these remained partially exposed) and the pulleys on some, but not all, of the sewing machines.

Similarly, while needle guards or side covers had been installed on some sewing machines, others lacked this protection. No such improvements, however, had been made to the factory's tool grinder which, as in the 2013 inspection, still lacked a shield

⁴⁴ Id., §1.19.1.

⁴⁵ Id., § 2.7.



protector and had its tool rest positioned too far from the grinder's abrasive wheel.

Finally, the plant's fusing machine lacked guarding on the feeder rolls at entry and exit points of the machine. (See Figure 8) Also, the air compressor in the factory's generator room lacked any labelling to indicate that this machinery can begin operating automatically at any time.⁴⁶

Figure 8: Fusing Machine with Unguarded Feeder Rolls

b. Recommendations

The WRC recommends that SMC remedy and prevent violations of Dominican labor law and the Ordinance with respect to machine guarding by installing:

- Additional guarding to cover belt drives on the boiler pump and air compressor, and the pulleys on all sewing machines;
- Needle guards and side covers on all sewing machines;
- Shield protection and proper positioning of the tool rest on the factory's tool grinder;
- Guarding on the feeder rolls at entry and exit points of the fusing machine; and
- Labelling on the air compressor to warn of automatic operation.

10. Fall Hazards

a. Findings

The WRC's safety and health expert found that the factory's loading dock presented risks that employees could be injured by falling from its 3.7-foot height. Specifically, he noted that an emergency exit from the factory opened onto to the loading dock just five feet in distance from its edge.

As a result, workers attempting to rapidly exit the facility during an emergency could fall off the platform. Additionally, while a thin chain has been installed 30 inches from the perimeter of the loading dock, this 'visual barrier' is insufficient to prevent workers from falling off its edge. These conditions violate Dominican workplace safety regulations.⁴⁷

⁴⁶ Id., § 2.3.2.

⁴⁷ Id., §§ 1.25 and 1.36.

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance with respect to falling hazards:

- Obtain and use, where and when necessary, physical fall protection barriers to protect workers from falling off the loading dock.

11. Health and Safety Training

a. Findings

The WRC's safety and health specialist found that the factory still lacks an ongoing health and safety training program which is required under Dominican workplace regulations.⁴⁸ While the factory manager, reportedly, provides newly hired employees with a verbal orientation that includes instructions to follow safety rules, no further safety training is provided to employees.

b. Recommendations

The WRC recommends that SMC remedy and prevent violations of Dominican labor law and the Ordinance in this area by implementing a health and safety training program addressing topics that include, but are not limited to, hazard communication, personal protective equipment, blood-borne pathogens, machine guarding, ergonomics, and electrical safety.

12. Health and Safety Committee

Nearly 90% of the workers who were interviewed by the WRC were unaware that the factory maintains a health and safety committee. During the factory inspection the WRC's safety and health expert met with the five members of the committee, two of whom are supervisors and three of whom are production employees.

According to the committee's records, it was first established in 2013, the same year as the WRC's previous inspection of the plant. However, while the committee's current members have served in this role since 2015, the committee's records indicate that the group has not held regular – or possibly, any – meetings since 2016.

According to the WRC's safety and health specialist, the factory safety committee is effectively nonfunctional. Its members do not conduct inspections of the factory, nor do they document workplace accidents or 'near-miss' incidents where there is clearly a significant safety risk to employees.

⁴⁸ Id., § 1.9.3.

Dominican workplace regulations require that employers with more than 15 workers establish a functioning a safety committee comprised of management and employee representatives for the purpose of implementing and monitoring the safety and health program of the facility.⁴⁹

b. Recommendations

The WRC recommends that SMC take the following measures to remedy and prevent violations of Dominican labor law and the Ordinance with respect to the factory's health and safety committee by ensuring that the committee:

- Meets on a regular basis;
- Conducts regular inspections of the factory; and
- Documents workplace accidents and 'near-miss' safety incidents.

IV. Conclusion

The violations of the City's Ordinance and Dominican law that are identified in this report have had and continue to inflict a significant negative impact on the workers at the SMC factory. Workers have been deprived of substantial legally required compensation and benefits, a wage theft that is sizeable and ongoing. Employees also continue to face both immediate and long-term health and safety hazards on the job.

These violations, though significant, could readily be remediated and corrected by SMC, Fechheimer, and Galls, assuming a commitment were made to achieving compliance with the City's Ordinance and Dominican law and compensating workers for these companies' past failures to do so. Unfortunately, the response of the companies to date indicates that such corrective action will most likely not be forthcoming unless they are held – or hold themselves – accountable to actually meeting such standards.

⁴⁹ Id., § 6.1-6.5.