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WORKER RIGHTS  
CONSORTIUM

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**WORKER RIGHTS CONSORTIUM ASSESSMENT  
POPULAR INTERNATIONAL GARMENT CO., LTD.  
MYANMAR/BURMA**



November 19, 2020

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## I. Introduction and Executive Summary

### *Introduction*

From January through June 2020, the Worker Rights Consortium (“WRC”) conducted an offsite assessment of working conditions and labor practices at Popular International Garment Co., Ltd. (“Popular Garment”) in Yangon, Myanmar (Burma). The factory is owned by Jiangsu Beaume Outdoor products Co., Ltd. (“Beaume”), a manufacturer of outerwear based in Nanjing, China. Popular Garment, which was registered in Myanmar/Burma in 2012,<sup>1</sup> has according to employees, a workforce of roughly 1,600 employees.

Popular Garment had been disclosed in 2019 by the US golf-wear brand, Cutter & Buck, as one of the latter’s suppliers for apparel licensed by universities affiliated with the WRC. As such, the factory is required to comply with university codes of conduct, and Cutter & Buck was obligated by the terms of its licensing agreements with these universities to ensure such compliance.<sup>2</sup>

Popular Garment has also been disclosed by the Cincinnati, Ohio-based, Fechheimer Brothers Co. (“Fechheimer”) as a supplier of apparel for use by employees of the City of San Francisco (“City”). As suppliers of apparel purchased by the City, Fechheimer and Popular Garment are subject to the City’s Sweat-Free Procurement Ordinance (“the Ordinance”), which requires facilities that manufacture clothing and footwear for the City to comply with certain labor and human rights standards.<sup>3</sup>

The WRC initiated its assessment of Popular Garment pursuant to its roles as both an independent monitor for universities of compliance by licensees with university codes of conduct for production of collegiate apparel and as the City’s monitor for its apparel suppliers’ compliance with the Ordinance.

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<sup>1</sup> Myanmar Directorate of Investment and Company Administration, Myanmar Companies Online, “Popular International Garment.” Accessed on March 23, 2020 at <https://www.myco.dica.gov.mm/Corp/EntityProfile.aspx?id=6d818483-f65b-4743-a921-13d0b4934600>.

<sup>2</sup> Collegiate Licensing Company, Special Agreement on Labor Codes of Conduct, Schedule I §§ I (“The term ‘Licensee’ shall for purposes of the Code, and unless otherwise specified in the Code, encompass all of Licensees’ contractors, subcontractors or manufacturers which produce, assemble or package finished Licensed Articles for the consumer.”) and II.A (“Legal Compliance: Licensees 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.”).

<sup>3</sup> *Codified as*, San Francisco, Cal., Administrative Code, Ch.12.U (“Adm. Code”) (2005), *as amended*, Feb. 11, 2010, available at [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12usweatfreecontracting?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_Chapter12U](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12usweatfreecontracting?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter12U).

### *Findings of Violations*

The WRC’s assessment of Popular Garment identified violations of Burmese labor law, international labor conventions—and, by extension, university codes of conduct and the City’s Ordinance—as well as other relevant standards in the following areas:<sup>4</sup>

- **Freedom of Association** – including the discriminatory dismissal of roughly 300 employee union leaders and other workers who are union members;
- **Working Hours** – including involuntary overtime, excessive overtime, and insufficient break periods;
- **Wages and Benefits** – including uncompensated overtime, unlawful wage deductions, nonpayment of the City Ordinance’s non-poverty wage standard, and restrictions on use of statutory sick leave, injury leave, bereavement leave, and casual leave;
- **Employment Contracts** – including illegal employment of workers under successive one-day contracts;
- **Harassment and Abuse** – including verbal abuse and profanity toward workers by supervisors and inappropriate surveillance of workers while the latter are in the factory’s onsite health clinic; and
- **Occupational Health and Safety** – including hazards in the areas of fire safety, ergonomics, lack of adequate machine guarding and personal protective equipment, excessive workplace temperatures, and unsafe employer-provided transportation.<sup>5</sup>

### *Factory Response*

The WRC notes that the management of the facility initially cooperated with the WRC’s assessment, agreeing to a physical inspection of its facility in March 2020. With the onset of the novel coronavirus (Covid-19) pandemic, the WRC then postponed the facility visit until such a visit no longer would constitute a health risk to the WRC’s inspectors and the factory employees.

However, subsequent to the postponement of the inspection, Popular Garment was less forthcoming and, despite several requests to do so, did not provide access to relevant documents and other information requested by the WRC. As a result, this report is based on the firsthand testimony of and copies of company documents provided to the WRC by workers from Popular Garment.

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<sup>4</sup> It should be noted that the fact that the WRC’s investigation, as reported in this document, did not yield findings of violations in certain other areas of the factory’s labor practices should not be construed as a certification of the factory’s overall compliance with respect to its practices in those areas. Moreover, due to the onset of Covid-19, the WRC has yet to conduct a physical inspection of the factory. Therefore, no inference should be drawn from this report as to the compliance of the factory with aspects of occupational health and safety or building safety that can only be certified via an inspection of the factory by a qualified industrial hygienist or engineer.

<sup>5</sup> It also should be noted that, as the WRC’s assessment of the factory was initiated prior to the onset of the Covid-19 pandemic and did not include an onsite inspection by an industrial hygienist. The discussion in this report does not touch on the safety and health measures that are necessary for factories to adopt to protect garment workers from transmission of Covid-19. For discussion of such measures, see, Worker Rights Consortium and Maquiladora Health & Safety Support Network, “Effective Infection Control Practices and Policies for Operating Apparel and Textile Factories,” April 2020, <https://www.workersrights.org/wp-content/uploads/2020/04/WRC-MHSSN-Infection-Control-04102020.pdf>.

These employees were interviewed by the WRC offsite, away from the factory premises, in keeping with best practice for labor rights investigations. The WRC continues to seek from Popular Garment and, if it is provided by the factory, will review documents and other information from its management related to the findings discussed in this report.

In June 2020, the WRC shared this report in draft form with the factory management and requested the management's substantive response to the WRC's findings of violations and the WRC's recommendations for corrective action, which are included here as the final section of this report. Unfortunately, to date, no such substantive response has been received from the factory management.

### *Buyer Responses*

The WRC also shared this report in draft form in June 2020 with both Cutter & Buck, as the university licensee that had disclosed this factory as one of its suppliers of collegiate apparel, and Fechheimer, which had disclosed this factory as one of its suppliers of apparel manufactured for the City of San Francisco. The WRC requested both buyers' cooperation in ensuring that the factory takes the measures recommended in this report to correct the labor rights violations that the WRC has identified at the factory.

For its part, Cutter & Buck responded by informing the WRC that, although Cutter & Buck had disclosed the factory as a supplier of collegiate apparel, Cutter & Buck had, in fact, ceased doing business with the factory and its owners, for commercial reasons, by the end of 2019 and had no immediate intention of resuming business relations. Upon request from the WRC, Cutter & Buck sent a letter to the factory owner, Beaume, on July 30, 2020, informing the latter that it would not place any orders with any of the factory owner's facilities unless and until the violations identified in the WRC report were fully remedied.

Fechheimer, however, has indicated that it continues to use Popular Garment for production of goods for the City of San Francisco. Despite multiple requests from both the WRC and the City, itself, Fechheimer has not provided any substantive response to the findings and recommendations in the WRC's report. On November 9, 2020, Fechheimer informed the WRC and the City that such a response would be forthcoming and that, while the factory disputed many of the WRC's findings, Fechheimer's own auditors had also confirmed findings that require remediation. Fechheimer indicated that its auditors would be meeting with the factory soon concerning such corrective actions.

## **II. Methodology**

The WRC's assessment of Popular Garment included 22 in-depth interviews with individual workers, nearly a dozen small group conversations with a total of 20 workers, and one large group discussion with more than 30 workers, all of which were conducted from January through June 2020, with current and recent factory employees. Consistent with best practice for labor and human rights assessments these interviews and discussions were held confidentially at locations

offsite from the factory premises.<sup>6</sup> The WRC also reviewed company documents which were made available to the WRC's assessors by the factory workers including pay slips and company announcements.

### III. Terms of Reference

The WRC assessed Popular Garment's labor practices and working conditions in relation to its obligations under the university codes of conduct, City's Ordinance, Burmese labor law and regulations, international labor standards, including those conventions of the International Labor Organization which Myanmar has ratified or is otherwise obligated to respect, and the codes of conduct of Popular Garment's customers, Lidl, Port Authority, and Liegeland,<sup>7</sup> and the Myanmar Garment Manufacturers Association, of which Popular Garment is a member.<sup>8</sup>

### IV. Findings of Violations and Recommendations for Corrective Action

The subsections below detail the findings of the WRC with respect to working conditions and labor practices at Popular Garment that violate university and other relevant codes of conduct, the City's Ordinance, Burmese labor laws, and international labor standards. Unless otherwise specified, the findings in this report relate to practices identified before the onset of the Covid-19 pandemic affected the global garment industry.

#### A. Hours of Work

According to workers' testimonies, employees are required to work six days per week, Monday through Saturday. From Monday through Friday, the employees' regular work shift starts at 8:00 a.m. and ends at 4:30 p.m. Employees receive a 30-minute unpaid lunch break, starting at 12:00 p.m. and ending at 12:30 p.m. On Saturday, the employees' work shift begins at 8:00 a.m. and ends at 12:00 p.m. Altogether employees' regular workweek at both factories totals 44 hours in length, which complies with Burmese law.<sup>9</sup>

However, workers added that, consistently, on Mondays through Fridays, without any additional rest break, they continue working for two more hours until 6:30 p.m. for a total of 10 paid working hours per day. Moreover, when the date to ship an order to a buyer nears, workers are frequently required to perform an additional two to two-and-a-half hours of overtime, again without a break, until 8:30 p.m. or 9.00 p.m., for a total work day of 12 to 12.5 paid hours. In addition, in such instances, workers typically are required to perform, on Saturdays, after their meal break, four more overtime hours from 12:30 p.m. to 4.30 p.m.

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<sup>6</sup> See, e.g., Kishantheni Parella, "Outsourcing Corporate Accountability," *Washington Law Review*, 89:747 (2014): 747, 776) <https://scholarlycommons.law.wlu.edu/wlufac/494/>.

<sup>7</sup> Lidl, "Code of Conduct," <https://www.lidl-ni.co.uk/code-of-conduct>, Port Authority, "Global Operating Principles" <https://www.portauthorityclothing.com/aboutus/supply-chain>, and NKD Group, "Code of Conduct." [https://www.nkdgroup.com/en/wp-content/uploads/sites/2/dlm\\_uploads/2017/10/NKD\\_CodeOfConduct\\_2015\\_EN\\_GP.pdf](https://www.nkdgroup.com/en/wp-content/uploads/sites/2/dlm_uploads/2017/10/NKD_CodeOfConduct_2015_EN_GP.pdf).

<sup>8</sup> Myanmar Garment Manufacturers Association, "Code of Conduct for Member Companies," <https://www.myanmargarments.org/wp-content/uploads/2018/12/MGMA-Code-of-Conduct-Ratified-Jan.-2015.pdf>.

<sup>9</sup> Factories Act, § 59 ("No adult worker shall be required or allowed to work in a factory for more than forty-four hours in a week.").

These working schedules result in employees performing, at minimum, 56 hours of overtime per month, and, in some cases, up to 80 hours of overtime per month.

In addition, according to workers, Popular Garment requires employees to attend a daily meeting in the factory at 7:50 a.m., 10 minutes before the start of their regular work shifts, where employees are informed of their daily production targets and any other assignments. If the workers fail to attend these meetings they are so scolded by their supervisors, even though employees are not paid for the additional 10 minutes they spend in the factory each day to attend these meetings.

As discussed further below, Popular Garment’s practices in this area violate Burmese labor laws concerning working hours with regard to: (1) mandatory overtime, (2) excessive overtime, and (3) provision of a rest break during overtime.

## **1. Mandatory Overtime**

### *Findings*

Burmese labor law requires that overtime be performed voluntarily.<sup>10</sup> As noted above, employees at both factories work at least two hours of overtime on nearly a daily basis, including two or four hours of additional work performed after the end of their regular shifts, plus 10 minutes each morning, when they are required to arrive at 7:50 a.m., before the 8:00 a.m. start of their work shift to attend a mandatory pre-shift meeting.

Employees reported that, if they request a gate pass from their supervisors in order to leave the factory at the end of their regular shift—i.e., without remaining to work overtime—they will incur the disfavor of their supervisor, who will yell at and otherwise verbally abuse them. By subjecting employees who choose to leave the factory at the end of the normal working day, instead of remaining to perform overtime, to verbal abuse by their supervisors, Popular Garment unlawfully denies employees the right to make a voluntary decision whether or not to perform this extra work.

Popular Garment further restricts employees’ right to decide voluntarily whether or not to perform overtime by, on weekdays, scheduling the bus transportation which the company provides for workers to travel home from the factories so that buses are only available after overtime hours have ended. As a result, employees who choose not to perform overtime—and only employees who choose not to perform overtime—must pay for and arrange transportation to their homes at their own expense, rather than having this provided by the company free of charge. By conditioning employees’ access to a valuable benefit (employer-paid transportation) on employees remaining at the factories during overtime hours, the company further unlawfully denies employees the right to decide voluntarily whether or not to perform this extra work. Finally, as further discussed below, Popular Garment requires workers to arrive at the factory 10 minutes before the start of their regular shift to attend a meeting, for which time the employees

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<sup>10</sup> Factories Act, § 62 (“No adult worker shall be required [...] to work in a factory for more than eight hours in any day.”).

are not paid. Employees made clear to the WRC that these pre-shift, off-the-clock meetings are mandatory, as they reported that their line leaders and supervisors will verbally reprimand them if they are “late” to these meetings. As the time workers spend at these meetings is outside their regular eight-hour shifts and as workers attend these meeting at the direction and for the benefit of the employer, this time represents overtime work for which employees legally should be able to choose voluntarily whether or not to perform.

### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City’s Ordinance the factory:

- Communicate to all employees that performing overtime hours of any kind is strictly voluntarily and workers will not be penalized for declining to do so;
- Prohibit supervisors, upon penalty of discipline, from verbally or otherwise harassing or abusing workers for declining to perform overtime; and
- Reschedule either the beginning of employees’ paid work shift or the time of the daily pre-shift meetings, so that these meetings can be held during regular paid working hours.

## **2. Excessive Overtime**

### *Findings*

Burmese labor law prohibits employers from requiring or permitting employees to work more than 10 hours in a single day, inclusive of rest periods.<sup>11</sup> As employees at Popular Garment begin their regular work shift at 8:00 a.m. (and as they are actually required to start work 10 minutes earlier by attending a pre-shift meeting) and typically perform overtime until at least 6:30 p.m., for a total work day of 10 hours and 30 minutes (or 10 hours and 40 minutes including the pre-shift meetings), including their unpaid rest periods, the factory regularly violates this legal limit.

### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City’s Ordinance the factory limit employees’ working day, including any overtime offered to workers to 10 hours in a single day, inclusive of rest periods.

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<sup>11</sup> Factories Act § 64 (“The periods of work of an adult worker in a factory inclusive of intervals for rest under § 63, shall be so arranged that such periods shall not spread over more than ten hours in any day, save with the permission of the President and subject to such conditions as he may impose, either generally or in the case of any particular factory.”).

### 3. Non-provision of Overtime Break

#### *Findings*

Burmese labor law requires employers to provide workers with at least a 30-minute break after every five hours of continuous work.<sup>12</sup> As noted, Popular Garment complies with this requirement with respect to its employees' morning working hours, which begin at 8:00 a.m. (or more accurately, 7:50 a.m., considering that they are required to attend the daily pre-shift meeting), by providing workers with a midday unpaid break from 12:00 p.m. to 12:30 p.m.

However, with regard to the employees' afternoon and evening working hours, although the legal requirement is to provide workers with a 30-minute break every five hours, the company violates the law, by requiring employees to continue to work without any breaks after the end of their regular hours to at least 6:30 p.m.—resulting in a continuous work period of at least six hours and, at times, until 9:00 or 9:30 p.m.—causing them to work for eight-and-a-half or nine hours straight.

#### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance, when the factory offers overtime work to employees, it limit these overtime hours or provide workers with an additional rest break to ensure that employees do not work more than five hours without such an extra break.

### B. Wages and Benefits

Myanmar's laws and regulations establishing the country's minimum wage require employers to pay workers (for an eight-hour shift) MMK 4,800 (US\$3.42) per day and MMK 144,000 per month (US\$102.90).<sup>13</sup> However, the law permits employers to pay workers a lower probationary wage of MMK 2,400 (US\$1.70) per day for workers' first three months of employment and, if workers require further training after the end of this probationary period, a wage of MMK 3,600 (US\$2.55) per day for their fourth through sixth months on the job.<sup>14</sup>

Workers' testimony indicated that the wages that the company pays its regular employees comply with this legal standard. Skilled workers such as sewing operators earn MMK 4,800 (US\$3.42), double the legal minimum for the probationary period, during their first three months of employment.

Unskilled workers, who are hired as "helpers," earn probationary wages of MMK 3,600 (US\$2.55) per day, MMK 1,200 more than the legal minimum for this period of MMK 2,400

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<sup>12</sup> Factories Act, § 63 ("The periods of work of adult workers in a factory during each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest at least of half an hour.").

<sup>13</sup> Minimum Wages Law, 2013; Minimum Wages Rules, 2013, Notification No. 64/2013; and Myanmar National Committee for Determination of Minimum Wage, Announcement on Proposed Minimum Wage No. 2/2018, May 14, 2018.

<sup>14</sup> Using the exchange rate of one US dollar equals 1,500 Myanmar kyat.

(US\$1.70) per day. Moreover, for their fourth through sixth months at the factories and beyond, these workers, of whom the factory employs roughly 200, are paid the standard minimum wage of MMK 4,800 per day, which, again, exceeds the legal “training” wage permitted during this period of MMK 3,600 (US\$3.42) per day.

In addition to these legally mandatory minimum wages, Popular Garments also pay workers several types of discretionary monthly bonuses. The first is a bonus for skilled workers whose amount is set according to the company’s evaluation of the employee’s skill level, which is rated as “A” (highest), “B” (intermediate), or “C” (lowest) depending on which machines the worker is able to operate. A worker at the “A” skill level receives a bonus of MMK 13,000 (US\$9.30) per month, at the “B” level, MMK 10,000 (US\$7.15) per month, and for the “C” level MMK 7,000 kyats (US\$5.00) per month. Workers who are designated as “helpers” (unskilled) are paid a bonus of MMK 5,000 (3.58) per month.

Second, Popular Garment also pays workers an attendance bonus of up to MMK 20,000 (US\$14.30) per month, although, as discussed further below, the company reduces the amount of this bonus if the employee has been absent during the prior month—even if the absence was for statutory leave. Third, workers can earn a “ticket bonus”, in an amount based on the number of pieces that the employee is able to produce beyond the production quotas set by the company. Some workers reported do not earn any ticket bonuses, while others report earning as much as MMK 18,000 (US\$13.00) per month.

Although the wage practices described above comply with Burmese law, the WRC found certain other aspects of Popular Garment’s payment of wages to workers that violate these laws, including: (1) nonpayment of overtime performed by workers, (2) unlawful punitive wage deductions, and (3) underpayment of the City’s non-poverty wage. All these violations are discussed in detail below.

## **1. Unpaid Overtime Work**

### *Findings*

As previously noted, employees reported that they are required to arrive at their work station in the factory at 7:50 a.m. to attend daily meetings, 10 minutes before the beginning of their work shift, for which they are not paid. Because the time that employees are required to spend at the factory before their paid work shifts to attend pre-shift meetings is outside the full legal working day, workers legally must be compensated for this time as overtime at the overtime premium rate of twice the worker’s usual hourly wage.<sup>15</sup> Popular Garment’s failure to pay its employees for time spent attending meetings before the start of their regular work day at the overtime premium rate, violates Burmese labor law.

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<sup>15</sup> Factories Act § 73 (“Wages for overtime: .... Where a worker in a factory works for more hours than those specified in section ... 62 ... he shall in respect of the overtime so worked be entitled to be paid at the rate of twice his ordinary rate of wages.”).

### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance the factory:

- Cease scheduling such meetings before the start of employees' regular work-shifts; and
- Compensate employees, at the legal premium rate for overtime, for all time spent at pre-shift meeting from their date of hire until these meetings are no longer held outside of regular working hours, or to the applicable statutory limit for such compensation, whichever is lesser.

## **2. Unlawful Wage Deductions**

### *Findings*

Burmese laws prohibit employers from taking deductions from workers' wages on account of an employee's absence from work, if the absence is due to use of statutory leave.<sup>16</sup> Like many other factories in Burma, however, Popular Garment, as discussed below, violates this prohibition by taking deductions from workers' MMK 20,000 (US\$14.30) monthly attendance bonus when employees are absent from work for any reason, even when the absence is on account of the employee taking statutory annual, sick, casual, bereavement or occupational injury leave.

The WRC's interviews with Popular Garment workers indicated that for an employee's first day of absence in a month, for any reason, including use of such statutory leave, results in the employee's attendance bonus being halved from MMK 20,000 (US\$14.30) to MMK 10,000 (US\$7.15), and for any subsequent day of leave during the month, forfeited entirely. As the company takes these deductions even when an employee's absence is due to use of statutory leave, they are unlawful—and doubly so because, as explained below, they serve to restrict workers' use of benefits to which they are legally entitled.<sup>17</sup>

### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance Popular Garment:

- Cease its practice of deducting from workers' attendance bonus for use of statutory leave; and
- Compensate employees for all such deductions that have been taken from their date of hire until this practice is ceased, or to the applicable statutory limit for such compensation, whichever is lesser.

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<sup>16</sup> Payment of Wages Act, 2016, § 7 (a) ("The Employer [...] can deduct from wages for absences except when such absence is during a public holiday or entitled leave, according to the law.").

<sup>17</sup> Payment of Wages Act, 2016, § 7 (a) ("The Employer [...] can deduct from wages for absences except when such absence is during a public holiday or entitled leave, according to the law.").

### 3. Non-poverty Wages

#### *Findings*

While compliant with Myanmar's legal *minimum* wage, the wages Popular Garment employees receive for their regular working hours falls well short of the *non-poverty* wage rate that the factory is required to pay workers under the City's Ordinance. In 2019, the City set its minimum non-poverty wage rate for factories in Myanmar that supply the City at US\$1.07 per hour, excluding benefits, and at US\$1.28 per hour, including healthcare and retirement benefits.<sup>18</sup>

As discussed above, the WRC found, based on a review of the company's payroll records and workers' reported monthly wages, that the minimum starting wage at the factory is MMK 3,600 (US\$2.55) per day, which is the rate at which employees are hired as unskilled workers ("helpers"). In addition to this amount, as noted, such workers are further guaranteed a bonus of MMK 5,000 (US\$3.58) per month, or MMK 192 (US\$0.14) per day. As the other elements of their pay, including the "attendance bonus" and the "ticket bonuses" are contingent on the worker having perfect attendance or fulfilling production quotas, they cannot be considered as components of the factory's minimum wage.

As a result, for determining compliance with the City's non-poverty wage standard, applicable monthly minimum wages at Popular Garment are MMK 3,792 (US\$2.69) per day, including the regular starting wages and the standard bonus paid to unskilled workers ("helpers"). As these wages are paid for these employees working their regular eight-hour shift, they are the equivalent of US\$0.34 per hour, or only 32 percent of the City's non-benefitted non-poverty wage.

Under the City's Ordinance, an employer can also comply with the non-poverty wage requirement by paying a base wage and providing healthcare and retirement benefits whose total value is 20 percent higher than the non-benefitted non-poverty wage, which, for Myanmar, is US\$1.28 per hour. In Myanmar, however, the rate of required employer contributions into the country's Social Security Fund, which provides these benefits to workers, is only three percent of the minimum wage applicable to the employee.<sup>19</sup> As a result, even if one includes the value of these employer contributions when calculating workers' wages, the compensation paid to workers at Popular Garment is only US\$0.35 per hour (US\$0.34 per hour x 1.03), which is only 27 percent of the benefitted non-poverty wage standard under the City's Ordinance.

#### *Recommendations*

The WRC recommends that Popular Garment ensure compliance with the City's non-poverty wage requirement by increasing workers' base daily wages, inclusive of the guaranteed monthly bonus, but exclusive of contingent production and attendance bonuses, by amounts sufficient to provide a minimum pay rate that complies with the City's non-benefitted non-poverty wage standard for Myanmar. If, as seems very likely, payment of the non-poverty wage is not

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<sup>18</sup> City of San Francisco Office of Labor Standards Enforcement, "Sweatfree Contracting Ordinance (Administrative Code Chapter 12U): 2020 International Wage and Benefit Rates," [https://sfgov.org/olse/sites/default/files/2020\\_Wage%20Rates%20International.pdf](https://sfgov.org/olse/sites/default/files/2020_Wage%20Rates%20International.pdf).

<sup>19</sup> Social Security Law, 2012.

financially feasible for the factory, the WRC recommends that Fechheimer Brothers assist Popular Garment in complying with this standard.

### **C. Statutory Paid Time Off**

#### **1. Restrictions on Statutory Sick, Casual, Bereavement, and Occupational Injury Leaves**

##### *Findings*

Burmese law requires that workers be afforded, on an annual basis, six days of paid casual leave;<sup>20</sup> up to 30 days of sick leave with medical authorization,<sup>21</sup> to be paid via the state social security system;<sup>22</sup> and paid bereavement leave to attend the funeral of a family member or parent.<sup>23</sup> As discussed below, the country's laws also require that workers who are injured at work be afforded up to 12 months of physician-approved medical leave for their recovery.<sup>24</sup>

While Popular Garment allows workers to take such paid statutory leaves, as discussed above, employees are penalized for, and, thereby, restricted from, doing so by the factory's practice of taking unlawful deductions from employees' attendance bonuses if they are absent from work, even if the absence is for the purpose of approved statutory leave.

Moreover, according to factory workers, the company further restricts employees' access to statutory leave by requiring workers to obtain permission from the factory's human resources office, whose personnel loudly voice their disapproval when employees submit requests for such leaves.

##### *Recommendations*

The WRC recommends that Popular Garment takes the following measures to comply with Burmese law, university codes of conduct, and the City's Ordinance:

- Provide workers with statutory leave without deducting their attendance bonus or subjecting them to verbal disapproval; and
- Provide back pay for attendance bonuses illegally deducted in the past.

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<sup>20</sup> Leave and Holidays Act, 1951 ("Leave and Holidays Act"), § 5.

<sup>21</sup> Leave and Holidays Act, § 6.

<sup>22</sup> Minimum Wages Rules, § 43 (c).

<sup>23</sup> Minimum Wages Rules, § 43(d).

<sup>24</sup> Social Security Law, 2012, § 52 (a) ("The insured has the right, if the employment injury occurs, to take medical care in accord with the stipulations and to enjoy other benefits contained in this chapter."), and § 55 ("The insured who suffers reduction or cessation of earnings by reason of incapable to work of employment injury, free medical treatment in addition to temporary disability benefit of 70 per cent of average wage within four months prior to occupational accident shall be entitled to enjoy commencing from the date of incapacity for work, to a maximum of 12 months under medical certificate.").

## **2. Failure to Provide Paid Occupational Injury Leaves**

### *Findings*

Burmese law requires factories to ensure, in case of occupational accidents, that workers are able to take medically approved leave for their recovery.<sup>25</sup> Workers testified that they had witnessed several cases where workers who were injured on the job were not able to take paid leave, and, as a result, returned to the job before their injuries healed. The company's failure to ensure that the workers can take paid leave during recuperation from occupational injuries is a violation of Burmese law.

### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance, Popular Garment should:

- Provide back pay to workers who have been victims of workplace accidents in the past and have been unable to take paid leave to recuperate; and
- Ensure that workers who experience occupational accidents going forward will receive sufficient paid leave to recuperate.

## **D. Terms of Employment**

### **1. Non-provision of Employment Contracts**

#### *Findings*

According to Burmese law, employers must provide workers with a written employment contract within the first 30 days of their hire.<sup>26</sup> Workers interviewed by the WRC consistently reported that Popular Garment have not provided them with a written employment contract since they began their work at the company.

#### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance, Popular Garment should provide all workers with a written contract.

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<sup>25</sup> Social Security Law, 2012, § 52 (a) ("The insured has the right, if the employment injury occurs, to take medical care in accord with the stipulations and to enjoy other benefits contained in this chapter."), and § 55 ("The insured who suffers reduction or cessation of earnings by reason of incapable to work of employment injury, free medical treatment in addition to temporary disability benefit of 70 per cent of average wage within four months prior to occupational accident shall be entitled to enjoy commencing from the date of incapacity for work, to a maximum of 12 months under medical certificate.").

<sup>26</sup> Employment and Skills Development law, § 5 (a) (1) ("After the employer has employed a worker for any job, he shall within 30 days of so doing, sign a Contract of Employment with the worker.").

## **2. Illegal Employment of Workers under One-Day (Daily) Contracts.**

### *Findings*

According to workers, in April 2020, Popular Garment began employing a number of workers at the factory under successive one-day contracts (“daily contracts”). These daily contract workers are employed in the factory’s main production operations. As discussed below, the introduction of daily contract workers at Popular Garment coincided with the dismissals of hundreds of regular workers.

Although Burmese law does not prohibit employment of workers under daily contracts in all circumstances, it limits the duration of such arrangements to 30 days, after which time the employer must provide an employee who has been working under daily contracts with a standard employment agreement.<sup>27</sup> As this is the case, under law, all workers hired under daily contracts 30 or more days prior to the current date must be issued regular employment contracts.

### *Recommendations*

To comply with Burmese law, university codes of conduct, and the City’s Ordinance, the WRC recommends that Popular Garment to employ all workers with more than 30 days of service at the factory under regular contracts.

## **E. Freedom of Association**

Prior to the onset of the Covid-19 pandemic, Popular Garment’s workforce of 1,600 employees included roughly 600 workers who were members of the Industrial Workers’ Federation of Myanmar (“IWF”) union, among whom were seven employees who formed the union’s elected in-plant leadership committee. This committee, which included the union’s in-plant officers, had previously negotiated and signed agreements with the factory management concerning labor relations issues.

During April and May 2020, Popular Garment laid-off roughly 480 employees, among whom were 300 out of the factory’s roughly 600 union members and, within the latter group, five out of the seven members of the union leadership committee. As discussed below, the WRC obtained an independent statistical analysis of the probability that, all other factors being equal, such an across-the-board layoff would include such a large proportion of the union’s rank-and-file membership and in-plant leadership.

As we explain in the subsections below, based on this analysis, the WRC found that a prima facie case exists that the company discriminatorily targeted employees who were union leaders and members in the layoff, thereby violating Burmese law, the City’s Ordinance and university codes of conduct.

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<sup>27</sup> Employment and Skill Development Law of 2013, § 5(a) (1) (“After the employer has employed a worker for any job, he shall within 30 days of so doing, sign a Contract of Employment with the worker.”).

## 1. Discriminatory Layoff of Elected Union Leaders

### *Findings*

The WRC consulted with a professional statistician at Pennsylvania State University who calculated that, all other factors being equal, the probability that the company would select, among the roughly 500 workers, out of the plant's total workforce of 1,600, whom it chose to layoff, five out of seven members of the union's in-plant committee was less than three percent. This being the case, the WRC finds that there is prima facie evidence that this layoff deliberately and discriminatorily targeted these five workers because they were union leaders.

Such apparent discriminatory targeting of union leaders for adverse action violates international labor standards, Burmese law, and by extension, the City's Ordinance and university codes of conduct. ILO Convention 98—which, under the ILO Declaration on Fundamental Principles and Rights at Work, Myanmar, as a member state of the ILO, is bound to observe—prohibits dismissal of workers on account of their participation in a union.<sup>28</sup> Moreover, Burmese law explicitly requires the reinstatement of union leaders who have been dismissed on account of their union activities.<sup>29</sup>

### *Recommendations*

To comply with Burmese law, university codes of conduct, and the City's Ordinance, the WRC recommends that Popular Garment either:

- Provide compelling evidence that the company selected the five union committee members for layoff for legitimate non-discriminatory reasons, without regard to their union activism; or
- Reinstatement the five union leaders to their previous positions in the factory with full back pay for the period since their layoff.

## 2. Discriminatory Mass Dismissal of Union Members

### *Findings*

The WRC consulted with a professional statistician at Pennsylvania State University who calculated that, all other factors being equal, the probability that the company would select,

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<sup>28</sup> ILO Convention 98, "Right to Organise and Collective Bargaining," (prohibiting "dismissal of ... a worker by reason of union membership or because of participation in union activities"); ILO Declaration on Fundamental Principles and Right at Work (1998) ("[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining....").

<sup>29</sup> Labor Organisation Law, § 18 ("The labour organization has the right to demand the relevant employer to re-appoint a worker if such worker is dismissed by the employer and if there is cause to believe that the reasons of such dismissal were based on labour organization membership or activities, or were not in conformity with the labour laws.").

among the roughly 500 workers, out of the plant's total workforce of 1,600, whom it chose to layoff, roughly 300 out of the 600 workers who were members of the union, was less than 0.01 percent, or less than one in 10,000. This being the case, the WRC finds that there is very strong prima facie evidence that this layoff deliberately and discriminatorily targeted these workers because they were members of the union.

As noted, such apparent discriminatory targeting of union members for layoff violates international labor standards, Burmese law, and by extension, the City's Ordinance and university codes of conduct. Moreover, under Burmese law, workers who have been dismissed on account of their union activities have the right to be reinstated.<sup>30</sup>

### *Recommendations*

To comply with Burmese law, university codes of conduct, and the City's Ordinance, the WRC recommends that Popular Garment either:

- Provide compelling evidence that the company selected the roughly 300 union members for layoff for legitimate non-discriminatory reasons, without regard to their union membership; or
- Reinstatement all of the union members to their previous positions in the factory with full back pay for the period since their layoff.

## **F. Harassment and Abuse**

### **1. Verbal Abuse**

#### *Findings*

Workers reported to the WRC that several line leaders (forepersons) at Popular Garment use derogatory language toward and yell at employees who decline to work overtime or ask for leave. One worker testified that she had overheard the factory's line leaders yell at workers, calling them "bastards" and "whores" when these employees didn't want to perform overtime. In particular the line leaders from the factory's Sewing Lines Numbers 1, 6, and 7 were singled out by the workers as being the most abusive.

While Burmese labor laws are silent on the issue of verbal abuse of workers by employers, university codes of conduct include a prohibition on "any physical, sexual, psychological or verbal harassment or abuse."<sup>31</sup> The City's Ordinance similarly prohibits, "subject[ing] any Worker to any physical, sexual, or other illegal harassment or abuse, ...."<sup>32</sup>

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<sup>30</sup> Labor Organisation Law, § 18 ("The labour organization has the right to demand the relevant employer to re-appoint a worker if such worker is dismissed by the employer and if there is cause to believe that the reasons of such dismissal were based on labour organization membership or activities, or were not in conformity with the labour laws.").

<sup>31</sup> Collegiate Licensing Company, Special Agreement on Labor Codes of Conduct, Schedule I §§ II.B.8 ("Every employee shall be treated with dignity and respect. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.").

<sup>32</sup>Adm. Code, "SEC. 12U.3. Prohibition on Sweatshop Conditions, subsection h.

Likewise, the code of conduct for member companies of the Myanmar Garment Manufacturers Association, of which Popular Garment is a member, states that the members will ensure that, “Management at all levels treat their workers with respect and dignity and shall not engage in abusive or inappropriate behavior toward workers. Disciplinary measures may not involve physical punishment or psychological harassment.”<sup>33</sup> Verbal abuse of employees clearly violates both these standards.

### *Recommendations*

To comply with Burmese law, university codes of conduct, and the City’s Ordinance, the WRC recommends that Popular Garment take the following steps:

- Implement a policy prohibiting verbal abuse or any other form of abuse, and inform all line leaders, supervisors and managers that they will be subject to discipline if they should engage in verbal or other abuse against any employee; and
- Communicate this policy, through written and verbal announcement, to employees, including how to bring a complaint should they be subjected to verbal or other abuse.

## **2. Demeaning Video Surveillance of Company Rest Rooms**

### *Findings*

Workers also told the WRC that the factory had installed a closed-circuit television (“CCTV”) camera in the plant that faces toward the toilets used by employees—a practice which is demeaning to the personal dignity of employees and constitutes a form of psychological harassment. Such harassment, as noted above, is prohibited under the City’s Ordinance, university codes of conduct, and the code of conduct of the Myanmar Garment Manufacturers Association (“MGMA”).

### *Recommendations*

The WRC recommends that to comply with Burmese law, university and MGMA codes of conduct, and the City’s Ordinance, Popular Garment should relocate or remove any CCTV cameras that are pointed toward the employee restrooms.

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<sup>33</sup> Myanmar Garment Manufacturers Association, “Code of Conduct for Member Companies,” article 4.6 re Humane Treatment of Workers.

## **G. Occupational Health and Safety**

### **1. Ergonomics**

#### *Findings*

Burmese law requires employers to provide suitable seating arrangements for all workers, including those who are generally required to work in a standing position.<sup>34</sup> Failure to provide ergonomically sound chairs for employees' use while seated can, over time, result in musculoskeletal disorders, including injuries to the back and shoulders that cause ongoing pain,<sup>35</sup> thereby, violating the legal requirement that factories be maintained in manner consistent with worker safety.<sup>36</sup>

Workers interviewed by the WRC described the chairs provided to them at Popular Garment as plain wooden benches that lack backrests, padding, casters, swivels, seat pan, height and back adjustment, or lumbar support.<sup>37</sup> These chairs, therefore, fail to meet the legal requirements.

#### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance, Popular Garment should provide employees who work in a seated position with chairs that meet minimum ergonomic standards, equipped with back and arm rests, padded seats, casters and swivel, seat height and back angle adjustments, and lumbar support.

### **2. Failure to Provide Personal Protective Equipment**

#### *Findings*

Workers in Popular Garment's cutting department who operate handheld machine cutters reported to the WRC that they have not been provided with steel mesh gloves as personal protective equipment ("PPE") to protect them from the cutters' sharp blades. At least one worker has had an injury to their finger due to the failure to provide this PPE. This omission violates Burmese labor laws, which require employers to provide workers with PPE at no cost to the employees.<sup>38</sup>

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<sup>34</sup> Factories Act, § 46.

<sup>35</sup> See, e.g., Anjali Nag, Hina Desai, Pranab K. Nag, "Work Stress of Women in Sewing Machine Operation," *Journal of Human Ergology* 21(1):47-55 (1992).

<sup>36</sup> Factories Act, § 42.

<sup>37</sup> US Occupational Safety & Health Administration (OSHA), "Sewing Station Design," <https://www.osha.gov/SLTC/etools/sewing/sewingstationdesign.html>; also, R. Herbert, J. Dropkin, D. Sivin, J. Doucette, L. Kellog, J. Bardin, N. Warren, D. Kass, and S. Zoloth, 1997, "Impact of an Ergonomics Program Featuring Adjustable Chairs on Upper Extremity Musculoskeletal Symptoms Among Garment Workers," (finding that provision of such seating significantly reduced the incidence of musculoskeletal injury and pain among garment workers).

<sup>38</sup> ILO, *Guide to the Myanmar Labour Law* (2017): 21 ("The employer must provide protective equipment ... at no cost to workers.").

### *Recommendations*

The WRC recommends that Popular Garment, to comply with Burmese law, university codes of conduct, and the City's Ordinance, ensure that workers who operate handheld machine cutters are provided with steel gloves.

### **3. Unhygienic Toilet Facilities**

#### *Findings*

According to workers testimony, Popular Garment fails to keep the washrooms in a clean and hygienic state, as required by Burmese law.<sup>39</sup> Workers report that often they find excrement on the toilet pan (toilets are “squat” toilets with a pan on the floor), and that no tissue paper is provided for the employees' use. Prior to the onset of the Covid-19 pandemic, soap also was not provided in the toilet, although currently it is being supplied.

#### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance, Popular Garment should ensure that the factory's washrooms, including the toilets, are cleaned several times per day and are kept well-stocked with hand soap and tissue paper.

### **4. Excessive Temperatures**

#### *Findings*

Burmese labor law mandates that workplace temperatures must be maintained at levels that will “secure workers [...] reasonable conditions of comfort and health.”<sup>40</sup> Workers interviewed, reported that they felt very hot in the factory and that only few ventilation fans had been installed inside the plant. Although it would be necessary to inspect the factory in order to determine whether the ambient temperatures at Popular Garment are at a level that is unhealthy for workers, employees' testimony clearly indicates that the factory is violating the requirement under Burmese law that factory temperatures also be maintained at a level that is comfortable for workers.

#### *Recommendations*

The WRC recommends that to comply with Burmese law, university codes of conduct, and the City's Ordinance and address excessive heat levels in the factory, Popular Garment should

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<sup>39</sup> Factories Act, §21 (1e) (“Latrines and urinals shall be employed, maintained in a clean and sanitary condition at all times.”).

<sup>40</sup> Factories Act, 1951, §15 (1) (“Effective and suitable arrangement shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air, and such equable temperatures as will secure workers therein reasonable conditions of comfort and health.”).

maintain temperatures at a comfortable level in all areas of the factory at all times, by installing additional fans, and, if necessary evaporative cooling pads or air-conditioning.<sup>41</sup>

## 5. Unhygienic Eating Area

### *Findings*

Burmese law requires that factories with more than 100 workers provide and maintain an eating area for employees.<sup>42</sup> Workers testified that the eating area provided by Popular Garment is much too small for the factory's workforce, with insufficient numbers of tables and chairs. As a result of this overcrowding, some workers sit onto the ground to eat and others eat lunch while standing up.

Workers also reported that in further violation of Burmese law,<sup>43</sup> the canteen is not kept clean. Workers described that building that houses the employees' eating area also is used as a warehouse for the rolls of cloth that the factory uses to make garments, introducing cotton dust into the eating area. Moreover, the eating area is also located near restrooms from which bad odors often comes.

### *Recommendations*

The WRC recommends that Popular Garment takes the following measures to comply with Burmese law, university codes of conduct, and the City's Ordinance:

- Ensure that the eating area it provides for employees is of sufficient size to allow all workers to sit at tables while eating; and
- Provide an eating area in a dedicated location that does not also serve as a warehouse, is kept in a clean condition, and is not adjacent to sources of bad odors.

## 6. Unsafe Employer-Provided Transportation

### *Findings*

Workers reported to the WRC that, because there is no public transportation within the industrial zones where Popular Garment is located, the company provides employees with transport to and from work in the back of flat-bed trucks which, in Myanmar, are called "ferries". According to workers, Popular Garment has arranged for 12 such trucks to provide transport for the workers.

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<sup>41</sup> Evaporative cooling pad systems reduce temperatures by drawing air through vertically mounted irrigated fiber pads. *See, e.g.*, Brian Strobel, Richard Stewart, and Ted Short, "Evaporative Cooling Pads: Use in Lowering Indoor Air Temperature," fact sheet (Ohio State Univ. 1999).

<sup>42</sup> Factories Act, § 49 (1) ("In every factory wherein more than one hundred workers are ordinarily employed adequate and suitable rest-sheds or rest rooms and an adequate and suitable lunch room, with drinking water facilities, where workers can take meals brought by them, shall be provided and maintained for the use of the workers.").

<sup>43</sup> Factories Act, § 49 (2) ("The rest-sheds, rest rooms or lunch room to be provided under sub-section (1) shall be sufficiently lighted, ventilated and maintained as far as practicable in a cool and clean condition.").

Workers report that the trucks used to transport them to and from work are often highly overcrowded, with as many as 60 workers packed onto a single truck-bed, resulting in some workers having to stand while the vehicle is in motion. These trucks do not provide workers with protection against inclement weather, much less against injury in case of an accident.

International labor standards recommend that employers provide safe transportation for employees in cases where alternative modes of transport are not available.<sup>44</sup> The transportation Popular Garment provides to workers, however, does not comply with this guidance, as it is highly unsafe for workers.

As a result, the transportation also fails to comply with university codes of conduct, which require that factories “provide a safe and healthy working environment to prevent accidents and injury to health arising out of, [or] linked with ... the[ir] operation[s].” An injury to a worker while being transported to or from the factory on the back of a company-provided truck both “aris[es] out of” and is “linked with” the factory’s operations.

### *Recommendations*

The WRC recommends that Popular Garment takes the following measures to comply with international labor standards and university codes of conduct:

- Ensure that the transportation it provides for employees to and from the factory is safe for workers, including at minimum that it is not overcrowded and all passengers are provided with fixed seating.

### **V. Conclusion**

The violations the WRC has identified in this report, though significant, are amenable to remediation and correction by the factory’s owner, Beaume, with the assistance and involvement of the City’s supplier, Fechheimer Brothers. This process should have as its immediate goal, the provision by Beaume, with respect to each of the findings in this report, a corrective action plan that is consistent with the recommendations in this report, with time-bound commitments for its implementation. The WRC urged that Fechheimer Brothers require Beaume to provide and implement such commitments without further delay.

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<sup>44</sup> ILO Recommendation 102 (Welfare Facilities), Article 32 (“Where adequate and practicable transport facilities for the workers are necessary and cannot be provided in any other way, the undertakings in which they are employed should themselves provide the transport.”).