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WORKER RIGHTS CONSORTIUM ASSESSMENT
DIRECT SHIP AMERICAS (HONDURAS)

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I. Overview

This report summarizes the role of the university licensee Fanatics, the Worker Rights Consortium (WRC), and other stakeholders to ensure compliance with university codes of conduct following the sudden closure of a collegiate factory located in Choloma, Honduras, known as Direct Ship Americas (DSA). At the time of the closure, the factory owed its production employees approximately $468,000 in legally mandated compensation and did not possess the resources to pay them. The aforementioned parties acted quickly to guarantee that all production workers were nonetheless paid in full and that the closure therefore did not result in any violation of the law or university codes of conduct.

DSA, owned by a U.S. businessman named Derek Delisle, employed 240 production workers at the time its closure in January of 2019. The factory was producing university-licensed apparel for Fanatics, which reported to the WRC that its purchasing was handled by way of a US-based agent known as A Game Apparel International (AGI). In December 2018, Fanatics learned from AGI that the factory would be closing in January and had not set aside funds to cover legally mandated severance and other terminal compensation.

Fanatics took quick action to alert the WRC to the situation and Fanatics committed, from the time of its initial communication to the WRC, that it would ensure that the workers received all compensation legally owed to them. It was clear this would mean that Fanatics or its agent would have to provide the funds. Over the last several months, Fanatics and AGI worked with the WRC to take all of the steps necessary to get workers paid. These steps included:

- developing a contact list of employees and a method of ongoing communication with the workforce, a process made more complicated by the minimal cooperation provided by DSA;

- advising workers of the situation, assuring them that they would receive their severance, and keeping them informed throughout the process;

- working with the Honduran Labor Ministry to make a calculation of the exact amount owed to each individual worker, a painstaking process requiring each worker to spend several hours at the Ministry reviewing payroll records;

- organizing a process for distributing funds designed to maximize convenience for workers, ensure their security, and generate necessary documentation;

- addressing various logistical and legal issues, including attempts by DSA to manipulate workers into relinquishing some of their legal rights; and

- overseeing the actual distribution.

As a result of this joint effort, and with all funds provided by AGI, more than 90% of the DSA production workers received their legally mandated compensation during the week of February 5, 2019 – within one month of the closure of the factory. The remainder were paid in March. In addition, the WRC identified a small number of workers who were not part of the workforce as of the closure date but had been dismissed in November 2018 and were also owed money: they had been paid some severance, but not the full amount. These workers will be paid this month.

The WRC frequently documents the closure of garment factories, including factories making university logo product, in which the employer cannot or will not comply with the law requiring terminal compensation. Under university labor codes, licensees are contractually obligated to ensure that workers are paid in these circumstances, and the WRC has achieved substantial and growing success in securing compliance with this obligation, averting severe hardship for tens of thousands of workers and their families. However, it has often required protracted engagement with licensees in a given case to get to a positive resolution.

What is notable about the case of DSA is that Fanatics informed the WRC of the problem, not vice-versa; that Fanatics recognized and committed to honor its university code obligations from the outset; and that, as a result, the WRC was able to work with Fanatics and its agent to get workers all of their compensation with minimal delay. This is exactly the approach licensees should take in these circumstances.

In this report, we outline in greater detail the circumstances of the factory closure, the process of calculating workers' entitlements, the mechanism of distribution, and the work done to overcome the various challenges that arose.

II. Factory Closure

DSA ceased operations in December 2018, during the year-end holidays and did not inform workers prior to the commencement of the holiday period. As a result, Fanatics learned of the closure and the absence of funds to pay severance and informed the WRC, before workers themselves were aware of the situation. The workers were scheduled to return to work on January 7.

When garment factories close in Central America, workers are frequently denied some or all of their legally-required severance benefits – which, if paid in full, are often the equivalent of six months to one year of wages. Thus, when workers at a factory like DSA learn that their place of employment has suddenly closed, they have good reason to fear the worst: unemployment made vastly worse by the loss of the severance they have earned.

In light of this, a priority for the WRC was to assure workers, when they returned to the factory on January 7 and learned of the closure, that they would be paid in full. The WRC was present at the factory on the day of the closure and shared a written communication with workers affirming Fanatics' and AGI's commitment to ensure that production workers would be paid the full amount of their severance benefits. By sharing this communication up front, the WRC was able to spare workers and their families weeks of fear and uncertainty.

While at the factory, the WRC also gathered workers' names and contact information to develop a list for future communications.

On the same day workers were informed of the closure, the WRC observed lawyers, representing DSA, urging factory employees to sign a document granting these lawyers power of attorney. According to worker testimony, the lawyers informed the workers that this power was necessary for efforts that DSA would supposedly undertake to pursue money from factory buyers to cover severance payments. In other closure cases that have been documented by the WRC, lawyers frequently contact workers at the time of a closure. In these past instances, lawyers offered their representational services to workers to pursue severance money owed from the employer in exchange for a percentage of the total money recovered. This case was unique in that the lawyers represented the *employer* and told workers that they would seek to recover funds from the buyers rather than from the employer. Since the buyers were already committing to pay the severance, workers had nothing to gain by transferring to their employer their legal authority to make claims. The fact that the lawyers were asking workers to sign such a document raised concerns for the WRC that the lawyers, or the company itself, might use the document to try to compel workers to pay them a percentage of their compensation.

III. Calculation of Severance Payments

Fanatics informed the WRC that its agent, AGI, would be the party responsible for collecting information as to the amount owed to each production worker and making the corresponding payments. The WRC discussed with the stakeholders the best mechanism for calculating the amount owed to each worker. The parties agreed that the Honduran Ministry of Labor would prepare an individual severance calculation in each case. The WRC submitted a written request to the Ministry of Labor requesting that it undertake the effort to collect the required data from the factory and prepare individual severance calculations for each worker.

The WRC communicated with workers, primarily by text messages, to inform them of the need to go to the Ministry of Labor. Efforts to contact workers after a closure occurs has, in other similar cases, been challenging given that workers are no longer reporting to work. However, the fact that the WRC was present at the factory on the day of the closure and, on this day, established contact with workers meant that the WRC could easily get in touch with workers and inform them of the need to report to the Ministry of Labor for the preparation of the individual severance calculations. The WRC's constant communication with all workers helped to ensure that all of the former DSA production workers were ultimately able to visit the Ministry.

The calculations, which are based on the workers' average income during the six-month period prior to the date on which their contract is terminated, include, by law, payment of severance (Honduran Labor Code, Article 120), advance notice or payment in lieu of notice (Honduran Labor Code, Article 116), unpaid vacation (Honduran Labor Code, Article 346), and any unpaid 13th and 14th month bonuses (Decrees Number 112 and 135-94, respectively). Any workers who were pregnant at the time of termination are entitled to an additional payment (Honduran Labor Code, Article 144).

Given the time-intensive task of reviewing payroll documents for the months prior to the factory closure, the process to prepare workers' calculations took several weeks. Throughout this process, the WRC engaged extensively with the Ministry of Labor, Fanatics, and AGI to make sure that the severance payments were calculated properly. The Ministry of Labor in Honduras has a very small staff and limited resources; it was therefore necessary for the WRC to devote substantial staff time during this period assisting in the document review and calculations.

IV. Challenges

Despite the commitment from the licensee, Fanatics, and its agent, AGI, to ensure payment, the process to ensure full compliance with Honduran labor standards was not without challenges.

The first challenge arose when DSA initially refused to provide the documents necessary to prepare the severance calculations. When the Ministry of Labor requested the required payroll documents from the factory, DSA denied access to the factory or to convey the documents. Both the WRC and the Ministry of Labor engaged in communication with the DSA owner and, following these communications, the owner eventually agreed to provide the payroll records.

The lack of resources and staff time from the Ministry presented a second challenge. As mentioned above, the process to prepare severance calculations is time and labor intensive and the Ministry of Labor had limited staff resources for undertaking this process. The WRC expected the law firm hired by AGI to execute the payments to play an active role in helping to expedite the payments, but its representatives did not play this role. Therefore, in order to expedite the process, the WRC was regularly onsite at the Ministry to assist with communications to workers and undertake other tasks to support the Ministry in its preparation of the calculations.

In fact, rather than assisting in the process to prepare the calculations, the law firm representing AGI created additional challenges by making arguments that the workers were not owed all of the money reflected in the calculations that had been prepared by the Ministry of Labor officials. For example, the lawyers argued that workers were not entitled to vacation pay or to the extra monetary protection for pregnant workers. The WRC communicated with Fanatics, which in turn communicated with AGI, requesting that the lawyers cease their efforts to press for lower calculations This put an end to the lawyers' efforts in this regard. The process of severance calculation is one area where the actions of the licensee's agent were not constructive – due primarily, it appears, to the assumption of AGI's local legal team that AGI's priority was to minimize cost, not ensure full compliance with the law. AGI did take action to compel a change in the lawyer's posture, when the WRC requested that it do so.

An additional challenge concerned the documents signed by workers granting power of attorney to lawyers representing DSA. As described above, on the day of the factory closure, the WRC witnessed lawyers representing DSA at the factory asking workers to sign powers of attorney. The WRC conducted interviews with workers and learned that these efforts by the DSA lawyers continued during the days following the announcement of the closure as the lawyers continued to urge workers to sign a power of attorney. Many workers signed the power of attorney out of fear that they would otherwise not receive all of the money to which they were entitled.

The WRC was concerned that the power of attorney would be used to the workers detriment, specifically that DSA's lawyers would approach workers after they were paid, demanding a percentage of the money. The WRC advised Fanatics and AGI of the need, therefore, to provide workers with the opportunity to revoke the power of attorney when receiving their payments. Fanatics and AGI agreed and a revocation document was drafted, to be offered to each worker.

V. Distribution of Funds

In February and March 2019, AGI distributed a total of $468,000, which covered 100% of all severance and other terminal benefits owed to DSA production workers employed at the factory at the time of its closure.

The WRC worked with AGI on logistics for the distribution of the funds. By the end of January, the Ministry of Labor had prepared a total of 222 individual worker calculations. The parties agreed that, though not all of the workers had come to the Ministry for the preparation of a calculation – there were 18 workers who had not – it made sense to proceed with the distribution of funds and to plan for a second distribution at a later date to address the remainder.

Based on its experience with past distributions of severance following a factory closure, the WRC proposed that AGI select a safe and neutral location for the distribution and that the distribution occur over a period of several days in order for it to be conducted in an orderly fashion. Following this recommendation, AGI made arrangements for the distribution to occur at the Hotel Sula, a large hotel located in the center of San Pedro Sula, and designated February 5 to February 9 as the distribution dates. A plan was also made to generate documentation of receipt for each payment. In order to ensure that no worker had to wait an excessive length of time at the distribution site, the WRC organized the workers into groups and informed each worker of the day that he or she should report to the distribution site.

All 222 production workers were able to collect their funds between February 5 and 9. All who had previously granted DSA's lawyers power of attorney were offered the opportunity to sign a document revoking it and most did so.

The WRC continued its outreach to the remaining 18 workers and all of them visited the Ministry in February 2019 and received their calculation. This second group of workers was paid on March 7, 2019. Given that the group was much smaller, it was not necessary for AGI to find a spacious location for the distribution and the payments were made from the offices of the Ministry of Labor.

As of the date of the second payment, all of the production workers who were employed at DSA at the time of its closure had received 100% of their terminal benefits. The total amount distributed, $468,000, represents an average payment of approximately $2,000 per worker, which is equivalent to about seven months of salary for each worker. None of the workers were compelled to pay any portion of their compensation to DSA's lawyers or to any other outside party.

VI. Funds for Workers Previously Terminated by DSA

At the time of the factory closure, the WRC learned that, prior to the factory's closure in early November 2018, 63 workers were laid off from DSA. DSA informed Fanatics and AGI that these workers were paid full severance at the time of their dismissals and that the factory had no outstanding debt to them. Documents provided by DSA appeared to support this.

However, several of the workers terminated in early November contacted the WRC and reported that they had received only partial payment of their severance benefits at the time of their terminations. In some cases, the workers reported to the WRC that management pressured them to accept less than the full amount of their severance. For example, one worker told the WRC that she was told by management that if she didn't accept the severance check, which management acknowledged to be less than the full amount, the worker would receive nothing because the company was facing economic difficulty and might be forced to close.

The WRC worked to ensure that all of the employees terminated in November were informed of their right to be paid in full and eight workers came forward to seek additional compensation. Each of the workers who filed a complaint was asked to visit the Ministry of Labor for the preparation of a severance calculation. The WRC then compared the Ministry-issued calculation with the amount paid by DSA, which showed that each of these workers had been underpaid to some degree. While most of the workers were underpaid by an amount of less than $300, one worker was owed more than $700 and another, who was pregnant at the time of dismissal, was owed approximately $2,400. (As noted above, pregnant workers receive a special protection under the law that requires that the employer provide additional terminal benefits, which had not been included in the severance payment issued by DSA.)

The WRC informed Fanatics of the underpayment for the eight workers and AGI has agreed to pay them in full. These payments are pending and the WRC will verify that they are carried out.

VII. Conclusion

The $2,000, on average, that workers received has made an enormous difference for them and their families. As workers seek new employment, they have the money to pay their rent, to pay their children's school fees, and to keep food on the table. In places like Honduras where severance laws exist, there is no unemployment insurance or other public income support. If garment workers don't get their severance, they get nothing. This is why ensuring payment is so important.

The proper and timely payment of severance to the former employees of DSA is attributable to university codes of conduct and to Fanatics' commitment to compliance. Had DSA not been a collegiate factory, had a different set of buyers been involved, it is virtually certain that workers would never have seen the money they earned and were legally owed, with deep and lasting consequences for them and those who depend on them. Indeed, this has been the outcome in numerous cases at non-collegiate factories in recent years, in Honduras and many other countries.

The WRC recognizes the commitment to the DSA workers made by Fanatics and AGI and their diligent efforts in following through on this commitment. Their approach in this case is a sign of the licensees' growing recognition of their obligation under university labor standards to take responsibility for ensuring that workers at their collegiate factories receive legally-mandated compensation – even in those cases where the only way to do so is for the licensee and/or its agent to provide the funds.