Comments of the Association of Global Automakers Concerning The Concept Paper for Clean Vehicle Rebate Project Eligibility

June 4, 2018

The Association of Global Automakers (Global Automakers)[1] appreciates the opportunity to comment on the Labor and Workforce Development Agency's (LWDA) and the California Air Resources Board's (CARB) Concept Paper for "Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers for Clean Vehicle Rebate Project Eligibility" (the Concept Paper). The Concept Paper was released as part of CARB's and the LWDA's efforts to implement the Budget Act of 2017, as amended by Assembly Bill (AB) 134, which required CARB to work with the LWDA "to develop procedures for certifying manufacturers of vehicles included in the Clean Vehicle Rebate Project as being fair and responsible in the treatment of their workers."

EXECUTIVE SUMMARY

Global Automakers and our members are committed to the long-term goals of reducing fuel consumption and lowering emissions of greenhouse gases and criteria pollutants from light-duty vehicles, while also continually improving vehicle safety and meeting the driving needs of our customers. The industry's success in environmental improvement is undeniable, and nowhere is this clearer than in the tremendous advances made in electric-drive vehicles (*i.e.,* plug-in hybrid-electric, battery-electric and hydrogen fuel-cell electric vehicles). Automakers have invested billions of dollars in the development of these technologies, and consumers today have over 40 electric-drive vehicle options in a variety of models and price points to choose from, with even more offerings announced in the coming years.

California also has a strong commitment to the development of the market for electric-drive vehicles. This commitment is backed by the State's significant investments in consumer incentives, its unparalleled development of electric charging and hydrogen refueling infrastructure, and its other complementary policies, such as access to high-occupancy vehicle lanes, which are important to customers choosing to purchase an electric-drive vehicle. Governor Brown's recent Executive Order allocating an additional $2.5 billion for investment in infrastructure and incentives is another example of California's efforts to support the electric

[1] The Association of Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and addresses environmental needs. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. Our members account for 56 percent of new vehicle sales and 56 percent of green vehicle sales in California. For more information, visit www.globalautomakers.org.

vehicle market. These measures are critical to the State's ambitious goal of putting at least 5 million zero-emission vehicles on California's roadways by 2030.

The Clean Vehicle Rebate Project (CVRP) is a central component of California's efforts to advance the market for electric-drive vehicles. Studies have shown that financial incentives such as rebates are a significant factor in customers' choices to purchase an electric-drive vehicle. Indeed, one need only to look at the experience in Georgia for empirical evidence concerning the importance of rebates. Georgia offered one of the highest incentives for battery-electric vehicles through June 2015. While the incentive was offered, Georgia's sales were 3%, nearly matching California's. But once the incentive ended, sales of electric vehicles dropped to below the national average (0.5 percent compared to 0.9 percent). Thankfully, the CVRP has long provided manufacturers and consumers with certainty concerning California's financial incentives for electric-drive vehicle sales. Certainty is critical because long term planning is required along with billions of dollars of investments—by industry and the state—to achieve California's important public policy goals regarding electric vehicle adoption.

Given that California's market for electric-drive vehicles is still developing and has a long way to go before reaching the State's goals, now is not the time to take our foot off the accelerator. But the implementation of AB 134—which would condition participation in the CVRP on an ambiguous certification that a manufacturer is "fair and responsible" in its treatment of workers—threatens to do just that. Autoworkers in the U.S. are already protected by a comprehensive and certain set of federal and state organizing, wage & hour, and health and safety laws. Our members are committed to full compliance with those laws, and conditioning CVRP eligibility on a "fair and responsible" certification by the LWDA would do nothing to advance the important goal of worker rights. Simply put, the CVRP should not be used as a tool to advance a political agenda completely unrelated to California's interest in clean vehicles, putting at risk one of the most influential and important state policies helping to grow the electric-drive vehicle market.

That said, Global Automakers appreciates CARB's and the LWDA's efforts to implement AB 134 and to develop the Concept Paper. We have concerns, however, about the workability and the legality of certain aspects of the Concept Paper, which we outline in more detail in these comments, below. In summary:

- The Concept Paper requires automakers to submit to the LWDA a significant amount of information and documents without articulating how that material would be relevant to its "fair and responsible" certification. That is because the Concept Paper does not articulate any criteria or standard by which the LWDA would draw the line between a "fair and responsible" manufacturer and one that is not. CARB and the LWDA must first determine how it is going to make the "fair and responsible" certification and then determine what information is relevant and necessary for that certification.

- Given that AB 134 did not authorize CARB and the LWDA to develop any sort of criteria for determining whether an automaker is "fair and responsible" in its treatment of workers—only to develop a "procedure" for a certification—the certification should

be based solely on compliance with applicable U.S. federal and state labor and employment laws.

- The scope of an appropriate "fair and responsible" certification is limited, as it must be, by the U.S. Constitution and federal law. For instance, under settled Supreme Court precedent, a manufacturer cannot be denied certification because of an alleged violation of the National Labor Relations Act. Similarly, under the Due Process Clause, the Commerce Clause, and general constitutional limitations on state sovereignty, California cannot penalize a manufacturer for labor and employment activities taking place entirely outside the State.

- Given these limits, whatever certification procedure is adopted should be based entirely on a manufacturer's self-attestation that it has complied with all relevant and applicable U.S. federal and California wage, labor and worker safety laws with respect to vehicles manufactured in California, and a confirmation by the LWDA that that attestation is correct and remains so. A denial of certification should be based only on final, non-appealable judgments/orders by a competent U.S. tribunal (*e.g.*, court or relevant agency) finding violations of applicable U.S. federal or California wage, labor or worker safety laws.

COMMENTS

In response to CARB's and the LWDA's request for comment on the Concept Paper, Global Automakers reiterates the comments submitted to the agencies on April 18, 2018, and incorporates them by this reference. We offer these additional comments to specifically address the issues raised in the Concept Paper. These comments should not, however, be construed as an endorsement of the proposition that CVRP eligibility should be tied in any way to some vague notion of "fair and responsible" treatment of workers. Rather, we submit these comments in order to ensure that the implementation of AB 134 is fair and workable, and comports with the law.

The Concept Paper was released by CARB and the LWDA on May 23, and set June 4 as the deadline for submitting public comments. Global Automakers does not believe that seven working days is sufficient time to provide detailed comments on the Concept Paper, especially given the complex and important issues this proposal raises. Nonetheless, we are submitting these comments by the deadline based on the review and analysis Global Automakers and our member companies have been able to complete at this time. We look forward to working with the agencies and with other relevant policymakers on this issue.

1. Having two separate "phases" to the certification procedure is unduly complicated and unnecessary.

The Concept Paper outlines two "phases" for the certification procedure, one applicable for an initial two fiscal years, and a second for subsequent fiscal years. The stated reason for these phases is to "enable LWDA and CARB to put initial certification procedures in place quickly to

respond to any Legislative direction while providing additional time to work with stakeholders for the development of further procedures for the second phase of the certification." Global Automakers does not believe having two phases is necessary. As explained in greater detail below, whatever certification procedure is adopted should be based entirely on a self-attestation that the automaker has complied with all applicable U.S. federal and state wage, labor and worker safety laws with respect to vehicles manufactured in California, and a confirmation that that attestation is correct and remains so. Such a procedure would be workable, be consistent with the limits on California's authority, and not require dual phases.

2. The certification procedure should be based on a self-attestation that the automakers is in compliance with applicable U.S. federal and state laws.

The basic framework of Phase 1 is a self-attestation that the automaker seeking CVRP eligibility complies with all applicable U.S. labor and worker safety laws. The automaker would then be CVRP eligible unless the LWDA finds that the original attestation was deficient in some way or if circumstances change such that the attestation is no longer accurate. Subject to the concerns raised below regarding the scope of the attestation and the required documentation—which is overbroad and unnecessary—Global Automakers agrees with this general framework. As we discussed in our April 18 comments, the clearest and administratively simplest procedure would be to (a) deem all manufacturers as certified unless decertified by the LWDA (which can be accomplished through a self-attestation), and (b) provide that decertification may be based only on final, non-appealable judgments/orders finding violations of applicable U.S. federal or state wage, labor or worker safety laws.

Limiting the certification procedure to an inquiry into compliance with applicable U.S. laws is necessary in light of the limited charge given to CARB and the LWDA in AB 134. The agencies have been requested "to develop ***procedures*** for certifying manufacturers of vehicles included in the Clean Vehicle Rebate Project as being fair and responsible in the treatment of their workers." In the absence of a standard—provided either by the Legislature or developed by the agencies—the inquiry must necessarily be limited to existing standards that are found in applicable U.S. laws and regulations. This is fundamental to the concept of due process: "Persons whose conduct is to be regulated should be given reasonably fair warning of what specific conduct must be avoided."[2] Also, "laws should contain definable standards so that persons charged with enforcement are precluded from ad hoc, subjective interpretations which can lead to arbitrary enforcement."[3] Thus, any action by the LWDA to deny participation in the CVRP without

[2] *Bailey v. City of Nat'l City*, 226 Cal. App. 3d 1319, 1328 (1991) (citing *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498 (1982))

[3] *Id.*

clearly-articulated standards would likely result in an arbitrary and capricious application of AB 134.[4]

Therefore, the initial finding of eligibility should be based on a manufacturer attestation that it has complied with all applicable U.S. federal and state wage, labor or worker safety laws with respect to vehicles manufactured in California. Decertification would result where the attestation is found not to be correct, or where a manufacturer has subsequently been found, through a final order by a U.S. court or agency, to have violated applicable U.S. federal or state wage, labor or worker safety laws.

Decertification, however, should not be based on isolated instances of minor infractions. AB 134 is limited to manufacturers who are not "fair and responsible in the treatment of their workers." This implies that decertification should be limited to employers who show a pattern of repeated, egregious, and willful labor violations pertaining to safety, organizing or work conditions addressed by applicable U.S. federal or state law.

3. Decertification may not be based on alleged violations of the National Labor Relations Act.

There is, however, a significant exception to the notion that decertification may be based on a violation of federal law. The LWDA may *not* base decertification on a finding of violations of the National Labor Relations Act (NLRA). The U.S. Supreme Court has repeatedly held that "States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits."[5] This categorical prohibition "prevents States not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRA, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act."[6]

From the Concept Paper, it appears that LWDA and CARB are relying on the voluntary nature of the CVRP to justify the breadth of the proposed procedures.[7] But just because a government program is voluntary does not mean that the state can place unconstitutional or preempted restrictions on participation in that program. The U.S. Supreme Court case, *Wisconsin Dept. of Industry v. Gould Inc.*, is on point. There, the Court held that the NLRA preempted a Wisconsin

[4] *See e.g.*, *Del Mar Canning Co. v. Payne*, 29 Cal. 2d 380, 382-83 (1946) (a "classification [between two businesses] is unconstitutional if it is purely arbitrary and capricious, resting on no reasonable or substantial difference between the classes when considered in relation to the object of the regulation."); *Britt v. City of Pomona*, 223 Cal. App. 3d 265, 274 (1990) (holding, in a challenge to a tax ordinance, that "[a]rbitrary and capricious classifications [between parties] are not permitted.")

[5] *Wisconsin Dept. of Industry v. Gould Inc.*, 475 U.S. 282, 286 (1986).

[6] *Id.* (citing *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)).

[7] *See* Concept Paper at 2 (stating that "CVRP is a voluntary incentive program, both for automobile manufacturers and consumers" and that the outlined procedures "would only apply to manufacturers that make qualifying vehicles and voluntarily choose to participate in CVRP").

statute debarring firms that have violated the NLRA three times within a 5-year period from doing business with the State. The fact that firms voluntarily choose to do business with the state and that Wisconsin had "chosen to use its spending power rather than its police power" in pursuing its aims did not alter the analysis.[8] "[F]or all practical purposes, Wisconsin's debarment scheme [was] tantamount to regulation," and was therefore invalid.[9] The same is true here. Just because participation in the CVRP is voluntary and California is relying on its spending powers does not change the fact that California's "fair and responsible" certification procedure, as outlined in the Concept Paper, amounts to state regulation of matters covered by the NLRA.

4. The procedure outlined in the Concept Paper improperly applies to labor and employment activities/practices occurring outside the State of California.

Under the procedure outlined in the Concept Paper, a manufacturer's eligibility to participate in the CVRP would be based on the automaker's labor/employment practices "with respect to each plant where the CVRP-eligible vehicles are built." Ostensibly, this would include vehicles built in California, in one of the other 49 states, or even in a foreign nation. While we agree that the certification should relate to only facilities where CVRP-eligible vehicles are built, basing CVRP eligibility on conduct occurring entirely outside of California would be unlawful.

As discussed in our April 18 comment, under the Due Process Clause, the Commerce Clause, and general constitutional limitations on state sovereignty, states are prohibited from enacting laws that directly regulate, or have the practical effect of regulating, activities and conduct outside their territories. The U.S. Supreme Court has held, "principles of state sovereignty and comity" dictate that a state cannot "impose its own policy choices on neighboring States."[10] Therefore, "a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other states,"[11] and indeed, may not do so even where the conduct is unlawful in those other states. The Commerce Clause of the U.S. Constitution also prohibits states from engaging in direct regulation of transactions and commerce in other states, as well as from enacting regulations that have the "practical effect" of "control[ling] conduct beyond the boundaries of the state."[12] The same holds true for labor and employment activities/practices in other countries, in light of the prohibition against states engaging in foreign policy.[13]

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[8] *Id.* at 289.

[9] *Id.*

[10] *BMW of North Am., Inc. v. Gore*, 517 U.S. 569, 571 (1996).

[11] *Id.*

[12] *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989).

[13] *See Am. Insurance Ass'n v. Garamendi*, 539 U.S. 396 (2002); *see also Zschernig v. Miller*, 389 U.S. 429, 436 (1968) (striking down Oregon law preventing citizens of East Germany from inheriting property as an impermissible "state involvement in foreign affairs and international relations").

Again, the Supreme Court's holding in *Wisconsin Dept. of Industry v. Gould Inc*. would refute any argument that the voluntary nature of the CVRP allows the LWDA to consider out-of-state activities in certifying a manufacturer. Supreme Court precedent makes it clear that California cannot legally impose its policy choices on these matters on other states even in a voluntary program.[14] Additionally, and as pointed out in Global Automakers' April 18 comments, implementation of AB 134 would not fall under the "market participant" doctrine because (a) it does not relate to the State's "efficient procurement of needed goods and services" but rather to a consumer rebate program, and (b) it is clearly intended to "encourage a general policy"—here, the fair and responsible treatment of workers on the auto industry—"rather than address a specific proprietary problem" of California.[15] There is therefore no legal way that California could deprive a manufacturer from participating in the CVRP based on activities taking place entirely outside the state.

5. Decertification should be limited to final orders of a U.S. tribunal of competent jurisdiction finding a violation of relevant law or regulation, and should not result from an independent investigation by the LWDA.

Several aspects of the procedure outlined in the Concept Paper envision the LWDA undertaking an investigation of allegations of unfair or irresponsible labor/employment practices. This is inappropriate for at least two reasons.

First, any such investigation would be duplicative of, and potentially conflict with, investigations of other federal and state agencies. For instance, allegations of unfair labor practices are within the exclusive jurisdiction of the National Labor Relations Board.[16] The LWDA has no jurisdiction to determine whether an automaker has engaged in unfair labor practices, or to impose sanctions against a company for what the LWDA perceives to be an unfair labor practice.[17] Similarly, the federal Occupational Safety and Health Administration (OSHA) and the California Division of Occupational Safety and Health (DOSH) investigate allegations of

[14] We note that the certification anticipated in Phase 1 and Phase 2 requires a showing that the manufacturer complies with all "***applicable*** local, state, and national laws" concerning wages, workplace safety, rights to association, etc. By limiting inquiry to "applicable" laws, we take the intent of the Concept Paper to be that a manufacturer's conduct would be judged against either federal law or the law of the state in which the operations take place. Thus, for example, an automaker producing a CVRP-eligible vehicle in Tennessee would need to certify compliance with all relevant federal and Tennessee laws, and not compliance with California laws. While we do not agree that the LWDA has any business ensuring that a Tennessee business is complying with Tennessee laws, the alternative—*i.e.*, requiring the Tennessee manufacturer to comply with *California* laws—would be entirely unworkable and unconstitutional.

[15] *See Chamber of Commerce v. Lockyer*, 463 F.3d 1076, 1084 (9th Cir. 2006), *rev'd on other grounds, Chamber of Commerce v. Brown*, 554 U.S. 60 (2008) (*quoting Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686, 693 (5th Cir. 1999)).

[16] *Construction Laborers v. Curry*, 371 U.S. 542, 546-48 (1963).

[17] *See, e.g., Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1397 (9th Cir. 1988) (holding that "'when an activity is arguably subject to § 7 or § 8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.'") (quoting *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959)).

unsafe work conditions. Any concern a worker may have with his employer's health and safety record should be raised with one of these agencies. If, for instance, an OSHA investigation were to find a violation of a worker health and safety law or regulation, the relevant federal statute provides ample remedy. If, on the other hand, OSHA were to determine that no violation has occurred, the LWDA should not be able to contradict that finding in the context of CVRP certification.

Second, the Concept Paper does not limit the inquiry to operations in the State of California, which, as we discuss above, is not proper. However, to the extent that the LWDA would investigate claims arising from conduct outside of California, that raises a host of legal and practical concerns, as the LWDA would have neither the authority nor the resources to investigate alleged misconduct taking place outside the State, let alone outside the U.S.

6. The CVRP eligibility process should not be abused or distorted by claims made to international organizations that do not adjudicate claims regarding labor issues.

Labor disputes arise occasionally. This outcome is simply inevitable no matter how "fair and reasonable" a company is in its treatment of workers and no matter how robust the relationship is between a company and its valued work force. When a difference of opinion arises some parties seek "leverage" through a range of public relations actions.

One public relations approach that is sometimes used is to file complaints before various international organizations that do not adjudicate those claims. Because such claims are not resolved through a process of review of evidence, investigation, reasoned arguments and impartial determination, there is little cost or risk to filing a complaint.

There is, however, significant public relations value to the endeavor. This type of complaint often references the United Nations Global Compact (UNGC) and the Organization for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises. However, the UNGC and the OECD are bodies that may only seek voluntary resolutions of labor disputes between consenting parties (typically unions and manufacturers). Thus, the LWDA scheme should never ask for or consider allegations made to bodies like the UNGC or OECD, as both have clarified they do not and will not finally adjudicate labor disputes against manufactures.[18] And as analyzed earlier, it is both unlawful and not practical for California to attempt to adjudicate actions in other jurisdictions.

[18] The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. Adhering governments have committed to encouraging their MNEs to promote and implement the Guidelines in their global operations and appointing a national contact point (NCP) to assist parties in seeking a mutually satisfactory resolution to issues that may arise under the Guidelines. Not even the U.S. NCP makes a determination whether a party is acting consistently with the Guidelines, and the U.S. NCP does not have legal authority to adjudicate disputes submitted under OECD process. (See http://www.state.gov/e/eb/oecd/usncp/specificinstance/index.htm), which are based one MNE Guidelines (http://mneguidelines.oecd.org/text). Likewise, the "[UNGC] is not a performance or assessment tool and does not make judgments about participant companies' performance." (See http://www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/Integrity_Measures_FAQs.html.

These international references also add no useful information when U.S. practices are involved, as U.S. labor rules meet international standards. The International Organization of Employers (IOE), which represents employers before the ILO, has specifically acknowledged that U.S. labor law comports with fundamental international labor standards.[19] As U.S. law meets the international standards and valid claims originating in the U.S. will be brought in the U.S., there is no value added in considering claims made before an entity that cannot adjudicate those claims.

We therefore underscore the importance of applying only applicable U.S. law.

7. The Concept Paper requires a burdensome submission of information and background material that is overbroad and irrelevant.

In light of the facts outlined above—*i.e.,* that decertification must be based on a final order of a competent U.S. tribunal of violations of U.S. or California law/regulations—the type of information automakers would be required to submit to the LWDA under the Concept Paper is overbroad and irrelevant. For example, in Phase 1, a manufacturer would be required to submit to the LWDA its "illness and injury prevention program or its equivalent." But, as discussed above, there are no substantive standards in the Concept Paper against which a manufacturer's illness and injury prevention program could be judged as fair/responsible or not. Similarly, a manufacturer would be required to provide the LWDA all "recordable worker injury rates, or their equivalent, during the prior 5 years." Nowhere does the Concept Paper describe how that information would be useful to the LWDA in determining whether an automaker's recordable worker injury rate is evidence of fair/reasonable treatment of workers. Would a nonfatal workplace injury rate of 3.0 per 100 full-time equivalent (FTE) be considered permissible, but an injury rate of 3.1 per 100 TFE be deemed unfair and irresponsible? If so, on what basis would the LWDA draw that line?

The discussion above highlights the most significant structural problem with the overbroad scope of the Concept Paper. It requires automakers to provide the LWDA a significant amount of information and documentation to support the certification without *first* articulating the basis on which the LWDA would certify or decertify an automaker as CVRP-eligible. That is backwards. The LWDA should first outline how it will determine whether a manufacturer is or is not fair and responsible in the treatment of its workers, and then determination what information from the company is relevant and necessary to make that determination. As discussed above, we believe that the only workable and legally-defensible procedure would be limited to determining whether an automaker has been repeatedly found in violation of applicable and relevant U.S. federal or state laws. The information necessary to support or deny certification on this basis would be much narrower than the information required under the Concept Paper.

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[19] See, *A Response by the International Organisation of Employers to the Human Rights Watch Report – "A Strange Case:",* at 14, located at http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/business_and_human_rights/EN/_2011-05-00__IOE_Response_to_Human_Rights_Watch_Report.pdf. ("IOE Report"). In the IOE Report, the IOE cites to numerous ILO determinations that U.S. law comports with international standards.

8. Compromising Privacy of Workers and Businesses Will Create A Disincentive to File Complaints and an Incentive to Fight Complaints Rather than Settle

The LWDA proposal offers conflicting methodologies for certification. The LWDA says it will use final, adjudicated decisions to help assess and certify manufacturers. Yet, the LWDA also provides itself broad investigatory powers to use data from claims not yet adjudicated. These investigatory powers suggest California could come under political pressure to use merely preliminary allegations to assess compliance with laws written and administered by other states and nations.

The investigatory process into workers' claims will permit the collection of vast amounts information about the claim including the worker's personal data. Employer data will also be gathered. The public nature of this process will pose challenges for employees and employers and create perverse incentives.

The investigatory process could include sensitive manufacturer and employee data never intended to be shared publicly. For the manufacturer, the data involved could include proprietary methods, strictly confidential data, and protected trade secrets. For employees, the data would likely include personal and professional records not normally made public. Those records would often include especially sensitive information regarding the employee's physical and mental health and, in some instances, information of about their family as well.

We believe it is inappropriate for the State of California to collect this data, and worse, to then make it public via this certification process. This enterprise is particularly inappropriate as employees are not given a voice in this matter. Do employees in the U.S. and abroad want California to investigate their claims and make them public? How will employees be consulted? If they are not consulted, this process would seem to violate their reasonable expectation of privacy. The intrusion in this area may then actually chill the filing of employee claims—especially for those outside of California who have no association with the state. Many employees outside California—whether in the US or beyond its borders—will almost certainly wonder by what authority another state finds it appropriate to inject itself into their affairs.

The LWDA-created process may also inhibit settlement of employee claims. Under this system, the mere existence of "claims" and "allegations" will be evaluated and could be found a negative indicator. Accordingly, manufacturers will have a powerful incentive to vigorously fight each claim to a conclusion to clear the record. This extra process will take time and expense and may compromise employees as claims that otherwise might have quickly resolved will more likely be litigated up and through a lengthy appeal.

9. Global Automakers agrees that manufacturers must be given due process before being deprived of participation in the CVRP.

Phase 2 provides that a manufacturer is entitled to notice and a hearing in the event that the LWDA were to deny or revoke certification. Global Automakers agrees. This would be especially important in the event that decertification is not limited to actual findings of violations

of U.S. law, but rather would entail LWDA independently investigating an allegation of unfair or irresponsible labor/employment practices (which, as discussed above, we do not believe it should be).

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Thank you for your consideration of these comments. If you have any questions, please feel free to contact Damon Porter (dporter@globalautomakers.org), or Charles Haake (chaake@globalautomakers.org) at (202) 650-5555).