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June 4, 2018

To: California Air Resources Board (CARB)
California Labor and Workforce Development Agency (LWDA)

From: Dr. Jill Esbenschade, Professor of Sociology
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I am writing to submit public comment concerning CARB and LWDA's Concept Paper on Potential Procedures for Certifying Manufacturers' Fair Treatment of Workers for Eligibility under the Clean Vehicle Rebate Project (CVRP) pursuant to the California Budget Act of 2017, as amended by Assembly Bill (AB) 134 (Committee on Budget, Chapter 254, Statutes of 2017) ("the Concept Paper").

I am a Professor of Sociology at San Diego State University. I have followed and studied the field of monitoring and certifying labor practices in global manufacturing of consumer products for over two decades. I am the author of *Monitoring Sweatshops: Workers, Consumers and the Global Apparel Industry* (2004), and other subsequent reports, articles, and book chapters on labor policies and practices in California and in the global economy. I am also a board member of the Center on Policy Initiatives, a nonprofit institute that conducts policy analysis and education on issues of economic inequality and poverty in the San Diego region, and the Worker Rights Consortium, an organization that conducts independent factory labor rights monitoring worldwide on behalf of many private nonprofit and public institutions, including the University of California system, several California State University campuses and the Cities of Los Angeles and San Francisco.

It is admirable that the state legislature has adopted a requirement that vehicles eligible for the CVRP be certified as produced under working conditions that are fair and responsible. The Concept Paper developed by CARB and LWDA clearly reflects a good faith effort to draft a plan for the implementation of this requirement. The approach that is proposed in the Concept Paper, however, raises significant concerns as to whether this program would actually ensure the required conditions for workers and provide a credible certification for consumers and the state agencies involved.

These concerns stem from three aspects of the proposal in the Concept Paper:

- (1) Its overreliance on vehicle manufacturers' self-representations concerning their own labor and employment practices as the basis for certification;
- (2) Its lack of any affirmative mandate for independent verification of such representations by or on behalf of the state agencies as a requirement for certification; and
- (3) The likely limited effectiveness of the complaint mechanism proposed for workers who encounter conditions that are not consistent with certification at their worksites, particularly in countries where basic labor rights are restricted either in law or practice.

I discuss each of these concerns in greater detail in the remainder of this comment.

Vehicle Manufacturers' Self-Representations Do Not Provide a Sound Basis for Certification of Fair and Responsible Conditions for Workers

The Concept Paper proposes to certify vehicle manufacturers as maintaining fair and responsible conditions for workers based primarily on reporting by manufacturers themselves concerning their own labor and employment practices – although this reporting is subject to review by LWDA. Experience over the last two decades in industries as diverse as production of consumer electronics,¹ garment manufacturing,² and cultivation of cocoa³ has shown that, in globally competitive markets, relying on corporations themselves to monitor and report on labor conditions in production of their own goods can fail to protect workers. Research and news reports have shown that rampant violations continue with such self-monitoring including the worst forms of labor abuses such as forced and child labor, widespread theft of legally owed wages, and harsh and dangerous conditions that have resulted in many serious injuries and deaths of workers.⁴ These abuses have occurred even where corporations have maintained their own codes of conduct for working conditions, retained outside auditing firms to monitor these conditions, and participated in industry-based factory monitoring and certification programs.⁵

¹ Duhigg, Charles and David Barzboza, "[In China, Human Costs Are Built Into an iPad](#)," *New York Times* (Jan. 25, 2012) ("We've known about labor abuses in some factories for four years, and they're still going on," said one former Apple executive ... "Why? Because the system works for us. Suppliers would change everything tomorrow if Apple told them they didn't have another choice." ... Apple is not the only electronics company doing business within a troubling supply system. Bleak working conditions have been documented at factories manufacturing products for Dell, Hewlett-Packard, I.B.M., Lenovo, Motorola, Nokia, Sony, Toshiba and others.").

² Yardley, Jim, "[Horrific Fire Revealed a Gap in Safety for Global Brands](#)," *New York Times* (Dec. 6, 2012) ("112 workers were killed in a blaze last month that has exposed a glaring disconnect among global clothing brands, the monitoring system used to protect workers and the factories actually filling the orders. ... Factory bosses had been faulted for violations during inspections conducted on behalf of Walmart ... Yet Tazreen Fashions received orders anyway, slipping through the gaps in the system by delivering the low costs and quick turnarounds that buyers — and consumers — demand.").

³ Sandler Clarke, Joe, "[Child labour on Nestlé farms: chocolate giant's problems continue](#)," *Guardian* (Sep. 2, 2015) ("Children younger than 15 continue to work at cocoa farms connected to Nestlé, more than a decade after the food company promised to end the use of child labour in its supply chain.").

⁴ Appelbaum, R. and N. Lichtenstein (ed.s). 2016. *Achieving Workers' Goals in a Global Economy*, Ithaca NY: Cornell University Press; Claeson, Bjorn. 2012. [Deadly Secrets](#). Washington DC: International Labor Rights Fund. Crinis, Vicki. 2010. "Sweat or no sweat: Foreign Workers in the Garment Industry in Malaysia." *Journal of Contemporary Asia* no. 40 (4):589-611. Esbenschade, Jill. 2012. "A Review of Private Regulation: Codes and Monitoring in the Apparel Industry." *Sociology Compass*, 6(7):541-556.

⁵ Barrientos, Stephanie, and Smith Sally. 2007. "Do Workers Benefit from Ethical Trade? Assessing Codes of Labour

The reasons for these failures are not complicated. Companies have little incentive to self-report, rather than conceal or downplay, conditions for workers that may be damaging to one of their most valuable assets – the reputation of their brand.⁶ At the same time, a corporation's self-interest in aggressive product delivery timelines⁷ and improved profit margins from lower labor costs can lead it to turn a blind eye to abusive or dangerous working conditions.⁸ Similarly conflicts of interest undermine the effectiveness of industry auditors retained to inspect factories who, due to concerns over incurring excessive costs or displeasing clients, often use slipshod methods that fail to detect, or, if they do detect, fail to press for the correction of conditions that violate workers' rights or endanger their safety.⁹

In short, a system like the one proposed in the Concept Paper, which relies *primarily* on information provided by corporations themselves, cannot credibly claim to certify fair and responsible conditions for workers. Indeed, even programs developed by industry itself to certify factories as meeting labor standards – which, as noted, have *not* had adequate results – have uniformly required *some* mandatory form of verification by an outside party.¹⁰ Similarly, companies that maintain labor standards for their suppliers or other business partners, as a general rule, do not accept self-reporting by the latter as proof of compliance but, instead, require some form of external verification.¹¹ A system of certification based on self-reporting, even if that reporting is subject to review by the LWDA, would not meet even this low bar.

Practice in Global Production Systems." *Third World Quarterly*, 28(4): 713-729; Anner, Mark. 2012. "Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains." *Politics and Society*, 40(4): 609-644.

⁶ For a recent example of this problem in electrical vehicle manufacturing, specifically, see Evans, W. and Alyssa Jeong Perry, "[Tesla says its factory is safer—but it left injuries off the books](#)," *MIT Technology Review* (Apr. 16, 2018) ("The melding of cutting-edge technology and world-saving vision is Tesla Inc.'s big draw.... Under fire for mounting injuries, Tesla recently touted a sharp drop in its injury rate for 2017, which it says came down to meet the auto industry average of about 6.2 injuries per 100 workers. But [a]n investigation by Reveal from the Center for Investigative Reporting found that Tesla has failed to report some of its serious injuries on legally mandated reports, making the company's injury numbers look better than they actually are.")

⁷ Id. ("Undercounting injuries is one symptom of a more fundamental problem at Tesla: The company has put its manufacturing of electric cars above safety concerns, according to five former members of its environment, health and safety team who left the company last year...[one of whom] said she warned superiors about a potential explosion hazard but was told they would defer to production managers because fixing the problem would require stopping the production line....'Everything took a back seat to production,' [she] said. 'It's just a matter of time before somebody gets killed.'").

⁸ Yardley, *supra*, n. 2.

⁹ Esbenshade, Jill. 2004. *Monitoring sweatshops: workers, consumers, and the global apparel industry*. Philadelphia: Temple University Press; Locke, Richard. 2013. *The Promise and limits of Private Power: Promoting Labor Standards in a Global Economy*. Cambridge: Cambridge University Press; O'Rourke, Dara. 2000. *Monitoring the Monitors: A Critique of PricewaterhouseCoopers' Labor Monitoring*. White paper, September 28.

¹⁰ Walsh, Declan and Greenhouse, Steven, "[Certified Safe, a Factory in Karachi Still Quickly Burned](#)," *New York Times* (Dec. 7, 2012) ("[A]n apparel industry certification system [SA8000]... [gave the\[\] factory, Ali Enterprises, a clean bill of health](#) just three weeks before the horrific blaze [that killed 262 workers].... These elaborate systems look good on paper, but the actual work is often delegated to largely unsupervised subcontractors eager to drum up more business. Certification systems like the SA8000, said Khalid Nadvi, an expert on monitoring at the University of Manchester in England, are 'very patchy and in many cases totally ineffective.'").

¹¹ Yardley, *supra*, n. 2. Esbenshade, *supra*, n. 4.

Credible Certification of Fair and Responsible Working Conditions Requires Independent Verification of Labor Practices

For the reasons discussed above, public entities that have not merely adopted labor standards for their business partners, but also sought to credibly enforce them have recognized that this requires some form of active monitoring and verification of labor and employment practices at the worksites in question. While the Concept Paper states that the LWDA will have the *right* to investigate vehicle manufacturers' representations concerning their labor and employment practices, it nowhere states that, as a regular aspect of the certification program, LWDA *will* actively monitor and seek to verify that working conditions are as manufacturers claim.

By contrast, leading public entities in the state that have sought to enforce labor standards, which they adopted for their business partners, have recognized that independent monitoring of workplaces is a vital tool in credibly addressing risks of abusive or dangerous conditions. For example, the University of California system has affiliated with two factory monitoring organizations, the Worker Rights Consortium and the Fair Labor Association, that conduct monitoring and investigations to assess compliance with the labor standards that it adopted for production of licensed logo apparel by companies like Nike, adidas and Under Armor.¹² Similarly, the Sweatfree Procurement Ordinance adopted by the City of San Francisco that imposes labor standards for that city's vendors of apparel for public employees includes a mandate for city agencies to proactively monitor these vendors' workplace practices, either directly or through retention of an independent third-party.¹³ The the City of Los Angeles' Sweatfree Procurement program also includes active monitoring of city vendors' manufacturing operations.¹⁴

Independent workplace monitoring has shown itself capable of effectively addressing some of the most intractable forms of labor rights abuses when combined with adoption of binding labor standards and significant economic incentives in favor of compliance – both of which the state legislature has instituted here through the “fair and responsible workplace practices” requirement for certification of eligibility under the CVRP. Between 2006 and 2013, a series of factory fires and collapses in Bangladesh claimed the lives of more than 1,500 garment workers. All of these

¹² University of California Office of the President, “[Sustainability](#)” (“UC was an early member of both the WRC, a third-party complaint based organization, and the FLA, a multi-stakeholder organization, comprised of non-governmental organizations, colleges/universities and companies. UC determined it important to join both the FLA and WRC because they provide different but complementary approaches to monitoring, independent assessments, and investigations into worker rights code violations.”).

¹³ [City of San Francisco Administrative Code, Chapter 12.U \(Sweatfree Contracting\)](#), §7.b (“Until such time as the City and County determines that it is able to adequately monitor compliance with this Chapter using City personnel, the City and County shall, subject to the Charter, including without limitation its budgetary and fiscal provisions, and the Municipal Codes, enter into an agreement with an independent non-profit organization with expertise in monitoring and reporting on Sweatshop Labor for assistance monitoring the compliance of Contractors.”).

¹⁴ [City of Los Angeles General Services Department, Supplier Programs and Requirements](#) (“The City has awarded a service contract to Worker Rights Consortium (WRC) for independent monitoring and enforcement of City's Sweat-Free Ordinance. WRC is an independent monitoring organization based in Washington DC, with ability to conduct on-going monitoring, outreach, and full-scale investigations at manufacturing facilities across the globe. Through its contract, WRC provides the City with periodic and investigation-specific reports that detail its findings. WRC's activities have been crucial in ensuring vendor compliance.”), http://gsd.lacity.org/sms/supplier_programs_and_requirements.htm.

disasters occurred in factories that were already subject to industry-run auditing and/or certification programs, which failed to detect and/or correct the deadly safety hazards that were pervasive in that country's garment sector.¹⁵ In the aftermath of these disasters, however, more than 200 international apparel brands and global trade unions agreed on a program of independent factory inspections and mandatory safety renovations, the Bangladesh Accord on Fire and Building Safety, that to-date has repaired over 80,000 identified workplace hazards, and nearly eliminated multi-fatality accidents in over 1,500 factories, employing more than 2.5 million workers.¹⁶ Closer to home, in the agricultural sector in Florida, a mandatory program of independent labor rights inspections jointly overseen by worker advocates and major food retailers, the Fair Food Program, has, over the past several years, helped bring an end to the forced labor conditions, sexual harassment and wage theft that formerly plagued many farmworkers in that state.¹⁷

Complaint Mechanisms for Reporting Abusive Working Conditions Must Address Restrictions on Labor Rights in Some Countries of Manufacture

The Concept Paper appropriately includes provisions for a complaint mechanism so that workers and others can report factory conditions that fail to comply with the fair and responsible standard. However, given that vehicle manufacturing is a globalized industry, the proposal fails to adequately address how this mechanism is to be made realistically accessible to workers in countries where the right to voice complaints about labor rights violations is severely restricted.

In the U.S., Canada and most Western European countries, while the right of employees to raise complaints about workplace issues is not always adequately protected, there are typically various independent entities through which workers can learn about the existence of complaint mechanisms and be supported in bringing such complaints. These include unions that may already represent or be in the process of organizing workers inside a given factory, or other social and economic justice organizations in the local community, such as civil rights groups, health and safety coalitions, and legal aid or worker centers.

In many developing countries, however, including some where clean energy vehicles are already being manufactured, such as China and Mexico, significant restrictions exist, in law and/or in actual practice, on the establishment and functioning of organizations that can independently assist workers in advocating for themselves.¹⁸ Moreover, it is in these same countries, due to

¹⁵ Anner, Mark, Jennifer Bair, and Jeremy Blasi. 2013. "Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks," *Comparative Labor Law & Policy Journal*, 35(1): 1-43.

¹⁶ Anner, Mark. 2018. "[Binding Power: The Sourcing Squeeze, Workers' Rights, and Building Safety in Bangladesh Since Rana Plaza](#)," Pennsylvania State University Center on Global Worker Rights.

¹⁷ Marquis, Susan L. 2017. *"I Am Not a Tractor!" How Florida Farmworkers Took On the Fast Food Giants and Won*, Cornell University Press.

¹⁸ [U.S. State Department, 2017 Country Reports on Human Rights Practices, Mexico](#) ("Mexico: The government's common failure to enforce labor and other laws left workers with little recourse regarding violations of freedom of association, poor working conditions, and other labor problems. ... Protection unions and 'protection contracts'--collective bargaining agreements signed by employers and these unions to circumvent meaningful negotiations and preclude labor disputes--was a problem in all sectors. ... Many observers noted working conditions of a majority of workers were under the control of these contracts and the unrepresentative unions that negotiated them, and that the protection unions and contracts often prevented workers from fully exercising their labor rights as defined by law. ... Other intimidating and manipulative practices were common, including dismissal of workers for labor activism. For example, there were reports that a garment factory in Morelos failed to halt workplace sexual

(often realistic) fears of employer and/or government retaliation, that workers need the most assistance and support if they are to actually make use of such a complaint mechanism.¹⁹

Simply put, in such countries, a complaint mechanism is unlikely to be even minimally effective unless it includes an independent means of making workers aware of its availability and some program of outreach to existing local organizations that may be able to provide assistance and support to workers in its use. For example, the successful workplace initiatives in Bangladesh garment industry and the Florida agricultural sector that are described above both place a significant emphasis on providing training to workers on their rights, including the right to lodge complaints of violations with those programs.²⁰ These programs also actively involve locally-based independent worker advocates in such education and in assisting workers to bringing such complaints.²¹ Similarly, the independent monitoring of overseas garment factories discussed above that is conducted on behalf of other public entities in California also features outreach to and education of local worker rights organizations concerning the relevant labor standards and the process for bringing a complaint of noncompliance.²²

Conclusion

Ensuring that certifications of fair and responsible conditions for workers producing vehicles eligible for the CVRP are truly credible requires that such certification stand on more than information proffered by the same company that is being certified. Instead, to be effective, any such program must maintain some means of actively and independently monitoring these conditions. This independent monitoring, to be effective, must also encompass, in certain countries, active outreach to and awareness-raising among workers and local labor rights advocates concerning the certification program's complaint mechanism.

harassment and sexual violence and instead fired the whistleblowers that reported the problem to management.”); [U.S. State Department, 2017 Country Reports on Human Rights Practices, China](#) (“China:....The law does not provide for freedom of association, and workers are not free to organize or join unions of their own choosing. Independent unions are illegal, and ...[t]he All China Federation of Trade Unions (ACFTU) is the only union recognized under the law. ... Workers generally did not view the ACFTU as an advocate, especially migrant workers who had the least interaction with union officials.... Coordinated efforts by governments at the central, provincial, and local levels, including harassment, detention, and the imposition of travel restrictions on labor rights defenders and restrictions on funding sources for NGOs, disrupted [independent] labor rights advocacy. The Guangzhou Intermediate People's Court sentenced labor activist Liu Shaoming to four and one-half years' imprisonment on July 7 after finding him guilty of 'inciting subversion of state power.'”).

¹⁹ Anner, *supra*, n. 5. Seidman, Gail. 2009. Labouring under an Illusion? Lesotho's 'sweat-free' label. *Third World Quarterly*, 30 (3): 581-598.

²⁰ Anner, *supra*, n. 15; Marquis, *supra*, n. 16.

²¹ *Id.*

²² [City of Los Angeles General Services Department, WRC Outreach and Education Reports.](#)