

Case No. 24-2269

In the
United States Court of Appeals
for the
Ninth Circuit

SMART APPAREL (U.S.), INC.,
Plaintiff-Appellant,

v.

NORDSTROM, INC.,
Defendant-Appellee.

*Appeal from the United States District Court for the Western District of Washington (Seattle),
Case No. 2:23-cv-01754-TLF · Honorable Theresa Lauren Fricke, Magistrate Judge*

**BRIEF FOR *AMICI CURIAE* RESPONSIBLE CONTRACTING PROJECT,
JOHN F. SHERMAN, III, PROFESSOR SARAH DADUSH, AND
OLIVIA WINDHAM STEWART IN SUPPORT OF NEITHER PARTY**

Bradley M. Wanner
HARRIS BEACH PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Telephone: (518) 427-9700
bwanner@harrisbeach.com

Brian D. Ginsberg
HARRIS BEACH PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
Telephone: (914) 683-1200
bginsberg@harrisbeach.com

July 29, 2024

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Amicus curiae Responsible Contracting Project certifies that it has no parent corporation and that no publicly held corporation owns any stock in it.

July 29, 2024

Respectfully submitted,

/s/ Bradley M. Wanner

Bradley M. Wanner
HARRIS BEACH PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Telephone: (518) 427-9700
bwanner@harrisbeach.com

/s/ Brian D. Ginsberg

Brian D. Ginsberg
HARRIS BEACH PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
Telephone: (914) 683-1200
bginsberg@harrisbeach.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	PAGE
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iii
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
ARGUMENT	
IN EVALUATING SMART APPAREL’S CLAIM THAT NORDSTROM CANCELED ITS PURCHASE ORDERS IN BAD FAITH, THIS COURT SHOULD TAKE INTO ACCOUNT THAT NORDSTROM PROMISED TO UPHOLD THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS YET EXECUTED THE CANCELLATION IN A MANNER THAT VIOLATED THOSE PRINCIPLES	9
A. When Buyers Abruptly Terminate Contracts With Their Suppliers, They May Inadvertently—But Significantly—Harm Workers Throughout The Supply Chain	9
B. Terminating Supply-Chain Contracts Without Considering Adverse Human Rights Impacts Likely Violates The United Nations Guiding Principles—The Authoritative Body Of Global Human Rights Standards	15
C. Nordstrom May Have Violated Its Implied Duty Of Good Faith And Fair Dealing By Canceling The Purchase Orders In A Manner Grossly Inconsistent With The Guiding Principles—Principles It Had Committed To Uphold	23
CONCLUSION	32

TABLE OF AUTHORITIES

CASES	PAGE
<i>Badgett v. Security State Bank</i> , 807 P.2d 356 (Wash. 1991) (en banc)	26
<i>Zenoff v. Corrento Therapeutics, Inc.</i> , 97 F.4th 634 (9th Cir. 2024)	25n
STATUTES AND RULES	
Countering America’s Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886 (2017)	2, 26, 27
Fed. R. App. P. 29	1n
Fed. R. Civ. P. 12	2, 25n
OTHER AUTHORITIES	
Ra’ad Al Hussein, <i>Ethical Pursuit of Prosperity</i> , Law Society Gazette (Mar. 23, 2015), https://www.lawgazette.co.uk/commentary-and-opinion/ethical-pursuit-of-prosperity/5047796.article	15
American Bar Association, <i>Contractual Clauses Project</i> , https://www.americanbar.org/groups/human_rights/business-human-rights-initiative/contractual-clauses-project	4
Mark Anner, <i>Power Relations in Global Supply Chains and the Unequal Distribution of Costs During Crises: Abandoning Garment Suppliers and Workers During the COVID-19 Pandemic</i> , 161 Int’l Labour Rev. 59 (2022)	10

TABLE OF AUTHORITIES (cont'd)

OTHER AUTHORITIES (cont'd)	PAGE
<p>Mark Anner, <i>Leveraging Desperation: Apparel Brands’ Purchasing Practices During Covid-19</i> (Penn State Center for Global Workers’ Rights Research Report) (Oct. 16, 2020), https://ler.la.psu.edu/wp-content/uploads/sites/4/2022/04/Leveraging-Desperation_October-16-2020.pdf</p>	10–11
<p>Mark Anner, <i>Unpaid Billions: Trade Data Show Apparel Order Volume and Prices Plummeted through June, Driven by Brands’ Refusal to Pay for Goods They Asked Suppliers to Make</i> (Penn State Center for Global Workers’ Rights Research Report) (Oct. 6, 2020), https://ler.la.psu.edu/wp-content/uploads/sites/4/2022/04/Unpaid-Billions_October-6-2020.pdf.....</p>	11, 12
<p>Mark Anner, <i>Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains</i> (Penn State Center for Global Workers’ Rights Research Report) (Mar. 27, 2020), https://ler.la.psu.edu/wp-content/uploads/sites/4/2023/11/Abandoned_CGWR-WRCApril12020-2.pdf</p>	13
<p>Business and Human Rights Resource Centre, <i>Wage Theft and Pandemic Profits</i> (Mar. 2021), https://media.business-humanrights.org/media/documents/Unpaid_wages_v9.pdf</p>	12
<p>Jasmin Malik Chua, <i>Brands Urged Not to “Disengage Abruptly” from Sri Lanka</i>, <i>Sourcing Journal</i> (Aug. 10, 2022), https://sourcingjournal.com/topics/labor/sri-lanka-garment-workers-jaaf-aafa-ethical-trading-initiative-fair-wear-361056/....</p>	30

TABLE OF AUTHORITIES (cont'd)

OTHER AUTHORITIES (cont'd)	PAGE
Sarah Dadush, <i>Prosocial Contracts: Making Relational Contracts More Relational</i> , 85 Law & Contemp. Probs. 153 (2022)	7
Sarah Dadush, <i>Contracting for Human Rights: Looking to Version 2.0 of the ABA Model Contract Clauses</i> , 68 Am. U. L. Rev. 1519 (2019).....	7, 14
International Bar Association, <i>Updated IBA Guidance Note on Business and Human Rights: The Role of Lawyers in the Changing Landscape</i> (2024), https://www.ibanet.org/Updated-business-and-human-rights- changing-role-of-lawyers	6
Akhil Duggar Jain, <i>Pandemic Induced Supply Chain Disruption in the Fashion World</i> , Financial Express (June 20, 2022), https://www.financialexpress.com/business/industry-pandemic- induced-supply-chain-disruption-in-the-fashion-world-2566451/	30
Sarah Joseph & Joanna Kyriakakis, <i>From Soft Law to Hard Law in Business and Human Rights and the Challenge of Corporate Power</i> , 36 Leiden J. Int'l L. 335 (2023)	16, 26
Jean Marie Layton, <i>Furniture Industry Pain Continues: Layoffs and Turbulence Hitting the Market</i> , Furniture Today (Sept. 12, 2023), https://www.furnituretoday.com/financial/furniture-industry-pain- continues-layoffs-and-turbulence-hitting-the-market/	10

TABLE OF AUTHORITIES (cont'd)

OTHER AUTHORITIES (cont'd)	PAGE
David Manners, <i>Packaging Lead Time 50+ Weeks</i> , Electronics Weekly (Apr. 7, 2022), https://www.electronicsworld.com/news/business/packaging-lead-time-50-weeks-2022-04/	10
Mei-Ling McNamara, <i>World's Garment Workers Face Ruin as Fashion Brands Refuse to Pay \$16bn</i> , The Guardian, Oct. 8, 2008, https://www.theguardian.com/global-development/2020/oct/08/worlds-garment-workers-face-ruin-as-fashion-brands-refuse-to-pay-16bn	12–13
Nordstrom, <i>Nordstrom Human Rights Commitment</i> , https://n.nordstrommedia.com/id/9ddcdbff-4c69-4d5c-b9a8-7d0837f010b2.pdf	23, 24
Nordstrom, <i>Nordstrom Partner Code of Conduct</i> , https://n.nordstrommedia.com/id/c6c42957-3800-4126-a3cd-0b9ff69772d7.pdf	25
Responsible Contracting Project, <i>About RCP</i> , https://www.responsiblecontracting.org/about	3
John G. Ruggie & John F. Sherman, III, <i>The Concept of “Due Diligence” in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale</i> , 28 Eur. J. Int'l L. 921 (2017).....	5

TABLE OF AUTHORITIES (cont'd)

OTHER AUTHORITIES (cont'd)	PAGE
John G. Ruggie & John F. Sherman, III, <i>Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice</i> , 6 J. Int'l Dispute Settlement 455 (2015)	5
John F. Sherman, III, <i>Human Rights Due Diligence and Corporate Governance</i> , in Corinne Elizabeth Lewis & Constance Z. Wagner, <i>A Guide to Human Rights Due Diligence for Lawyers</i> (American Bar Association 2023).....	4
John F. Sherman, III, <i>Integrating Human Rights Due Diligence Into Model Supply Chain Contracts</i> , in Susan A. Maslow & David V. Synder, <i>Contracts for Responsible and Sustainable Supply Chains: Model Contract, Clauses, Legal Analysis, and Practical Perspectives</i> (American Bar Association 2023)	4
John F. Sherman, III, <i>The Corporate General Counsel Who Respects Human Rights</i> , 24 Legal Ethics 49 (2021).....	4–5
John F. Sherman, III, <i>Beyond CSR: The Story of the UN Guiding Principles on Business and Human Rights</i> , in Rae Lindsay & Roger Martella, <i>Corporate Social Responsibility – Sustainable Business: Environmental, Social, and Governance Frameworks for the 21st Century</i> (Wolters Kluwer 2020)	5

TABLE OF AUTHORITIES (cont'd)

OTHER AUTHORITIES (cont'd)	PAGE
John F. Sherman, III, <i>Irresponsible Exit: Exercising Force Majeure Provisions in Procurement Contracts</i> , 6 Bus. & Human Rights J. 127 (2021)	5, 22, 23
The Shift Project, <i>Shift Home – Shift</i> , https://shiftproject.org	6
David Snyder, Susan Maslow & Sarah Dadush, <i>Balancing Buyer and Supplier Responsibilities: Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0</i> , 77 The Bus. Lawyer 115 (2021)	7
Kelly Stroh, <i>UAW Strike: How Auto Supply Chain Managers Can Mitigate Disruption</i> , Supply Chain Dive (Sept. 20, 2023), https://www.supplychaindive.com/news/uaw-strike-how-auto- supply-chain-managers-can-mitigate-disruption/694250/	9
United Nations, Office of the High Commissioner for Human Rights, <i>Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting</i> (Aug. 2023), https://www.ohchr.org/sites/default/files/documents/issues/busines s/bhr-in-challenging-contexts.pdf	<i>passim</i>
United Nations, Office of the High Commissioner for Human Rights, <i>Frequently Asked Questions About the Guiding Principles on Business and Human Rights</i> (2014), https://www.ohchr.org/sites/default/files/Documents/Publications/F AQ_PrinciplesBusinessHR.pdf	16

TABLE OF AUTHORITIES (cont'd)

OTHER AUTHORITIES (cont'd)	PAGE
United Nations, Office of the High Commissioner for Human Rights, <i>Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework</i> (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf	<i>passim</i>
United Nations, Office of the High Commissioner for Human Rights, <i>The Corporate Responsibility to Respect Human Rights: An Interpretative Guide</i> (2012), https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf	18
United Nations Industrial Development Organization, <i>UNIDO and Sustainable Supply Chains</i> (Aug. 2023), https://www.unido.org/sites/default/files/unido-publications/2023-11/UNIDO%20and%20Sustainable%20Supply%20Chains_0.pdf	10
Jeffrey Vogt et al., <i>Farce Majeure: How Global Apparel Brands are Using the COVID-19 Pandemic to Stiff Suppliers and Abandon Workers</i> (European Center for Constitutional and Human Rights Policy Paper) (2020), https://www.ecchr.eu/fileadmin/ECCHR_PP_FARCE_MAJEURE.pdf	14

IDENTITY AND INTEREST OF *AMICI CURIAE*¹

When buyers abruptly cancel purchase orders that they have placed with suppliers, they set in motion consequences that may harm workers throughout the supply chain responsible for the production of the subject goods. And when buyers set those effects in motion without first considering the full ramifications of their actions—*i.e.*, without first conducting a risk-benefit analysis to determine the toll that canceling purchase orders can be expected to take on living, breathing individuals—they may violate international human rights standards. Responsible Contracting Project, John F. Sherman, III, Professor Sarah Dadush, and Olivia Windham Stewart submit this brief as *amici curiae* because they are uniquely suited to explain to the Court how Nordstrom, in suddenly canceling nearly \$7 million worth of purchase orders it had placed with Smart Apparel (U.S.), Inc. (according to the facts as alleged

¹ The parties consented to the filing of this *amici curiae* brief. *See* Fed. R. App. P. 29(a)(2). No party’s counsel authored the brief in whole or in part. No party or party’s counsel contributed money that was intended to fund the preparation or submission of the brief. No person other than *amici*, their members (in the case of the organizational *amicus*), or their counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

in Smart Apparel’s complaint), violated the globally authoritative United Nations Guiding Principles on Business and Human Rights— notwithstanding that Nordstrom’s purported reason for canceling was itself related to human rights, namely a concern that Smart Apparel’s parent company had supposedly used North Korean forced labor in some portion of its supply chain in violation of the federal Countering America’s Adversaries Through Sanctions Act (“CAATSA”), Pub. L. No. 115-44, 131 Stat. 886 (2017). Because the parties entered into the purchase orders against the backdrop of Nordstrom’s promise to uphold the United Nations Guiding Principles, this Court should consider Nordstrom’s violation of those principles when evaluating whether the United States District Court for the Western District of Washington (Fricke, J.) erred in dismissing, for failure to state a cause of action under Federal Rule of Civil Procedure 12(b)(6), Smart Apparel’s claim against Nordstrom that Nordstrom canceled the purchase orders in bad faith.²

² The positions taken in this brief by *amici curiae* are wholly their own and do not necessarily represent the views of any institutions or persons with whom *amici curiae* have been or are employed, associated, or affiliated.

Responsible Contracting Project is a not-for-profit initiative, housed within the Center for Corporate Law and Governance at Rutgers Law School in New Jersey, that was established in 2022 to improve commercial contracting practices by aligning them with prevailing international human rights standards. See Responsible Contracting Project, *About RCP*, <https://www.responsiblecontracting.org/about>. Responsible Contracting Project develops and disseminates practical tools that contracting parties can use to help ensure that their contracts adhere to widely accepted human rights principles, including the United Nations Guiding Principles on Business and Human Rights, the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, as well as that organization’s Due Diligence Guidance for Responsible Business Conduct. Responsible Contracting Project’s “toolkit” also helps companies resolve inconsistencies between their contracts and their human rights commitments—inconsistencies that are highlighted where, as here, the human rights commitments are incorporated into the contracts. Responsible Contracting Project additionally works with companies, industry associations, investors, policymakers, and civil society organizations to promote the use of these

tools, which take as their foundation the set of model contract clauses developed by a working group of the American Bar Association's Business Law Section to promote compliance with international human rights norms. American Bar Association, *Contractual Clauses Project*, https://www.americanbar.org/groups/human_rights/business-human-rights-initiative/contractual-clauses-project.

John F. Sherman, III is a senior advisor to Responsible Contracting Project. He is an internationally recognized expert on the intersection of business and human rights, having consulted, lectured, and published widely on the subject. He is the author of many influential journal articles and book chapters in that field. *See, e.g.*, John F. Sherman, III, *Human Rights Due Diligence and Corporate Governance*, in Corinne Elizabeth Lewis & Constance Z. Wagner, *A Guide to Human Rights Due Diligence for Lawyers* (American Bar Association 2023); John F. Sherman, III, *Integrating Human Rights Due Diligence Into Model Supply Chain Contracts*, in Susan A. Maslow & David V. Synder, *Contracts for Responsible and Sustainable Supply Chains: Model Contract, Clauses, Legal Analysis, and Practical Perspectives* (American Bar Association 2023); John F. Sherman, III, *The Corporate General*

Counsel Who Respects Human Rights, 24 Legal Ethics 49 (2021); John F. Sherman, III, *Beyond CSR: The Story of the UN Guiding Principles on Business and Human Rights*, in Rae Lindsay & Roger Martella, *Corporate Social Responsibility – Sustainable Business: Environmental, Social, and Governance Frameworks for the 21st Century* (Wolters Kluwer 2020); John F. Sherman, III, *Irresponsible Exit: Exercising Force Majeure Provisions in Procurement Contracts*, 6 Bus. & Human Rights J. 127 (2021); John G. Ruggie & John F. Sherman, III, *The Concept of “Due Diligence” in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale*, 28 Eur. J. Int’l L. 921 (2017); John G. Ruggie & John F. Sherman, III, *Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice*, 6 J. Int’l Dispute Settlement 455 (2015).

From 2008 to 2011, Mr. Sherman served as senior legal advisor to the late Professor John G. Ruggie of the Harvard University Kennedy School of Government, the Special Representative of the United Nations Secretary General on Business and Human Rights and the author of the United Nations Guiding Principles on Business and Human Rights. Mr.

Sherman was a core member of the team, led by Professor Ruggie, that formulated those principles. From 2011 to 2023, Mr. Sherman served as general counsel and senior advisor to the independent nonprofit charitable organization The Shift Project: the recognized international authority on the meaning and implementation of the United Nations Guiding Principles, which Professor Ruggie chaired from its inception until his passing. *See* The Shift Project, *Shift Home – Shift*, <https://shiftproject.org>.

For the last 15 years, Mr. Sherman has consulted with multinational companies, law firms, and bar associations on the meaning and application of the United Nations Guiding Principles. He has worked with the International Bar Association to produce guidance documents on business and human rights for corporate lawyers and bar associations, including the *Updated IBA Guidance Note on Business and Human Rights: The Role of Lawyers in the Changing Landscape* (2024), <https://www.ibanet.org/Updated-business-and-human-rights-changing-role-of-lawyers>.

Professor Sarah Dadush is a co-founder of Responsible Contracting Project and serves as its director, leading Responsible

Contracting Project's work to ensure that commercial contracts comply with international human rights standards. She is a Professor of Law at Rutgers Law School where she teaches and writes in the areas of contract law, corporate social responsibility, consumer law, and the ways in which business activities can impact human rights. *See, e.g.*, Sarah Dadush, *Prosocial Contracts: Making Relational Contracts More Relational*, 85 *Law & Contemp. Probs.* 153 (2022); David Snyder, Susan Maslow & Sarah Dadush, *Balancing Buyer and Supplier Responsibilities: Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0*, 77 *The Bus. Lawyer* 115 (2021); Sarah Dadush, *Contracting for Human Rights: Looking to Version 2.0 of the ABA Model Contract Clauses*, 68 *Am. U. L. Rev.* 1519 (2019).

Professor Dadush has served as a leading member of several American Bar Association committees and international working groups addressing the issue of human rights in global supply chains, including the American Bar Association Business Law Section Working Group to Draft Model Contract Clauses to Protect Workers in International Supply Chains. Professor Dadush joined the Rutgers Law School faculty in 2013. Before entering academia, she was legal counsel at the United Nations

International Fund for Agricultural Development, a fellow at the New York University School of Law Institute for International Law and Justice, and an associate at the global law firm Allen & Overy.

Olivia Windham Stewart co-founded Responsible Contracting Project with Professor Dadush and served as Responsible Contracting Project's first deputy director. Since 2022, Ms. Windham Stewart has served as secretary of the WorldCC Foundation, an organization that works to promote and enable an environment in which commercial contracting policies and practices are fair and transparent. In addition to her work with WorldCC Foundation, Ms. Windham Stewart works as an independent specialist, based in the United Kingdom, advising businesses, business associations, non-governmental organizations, academics, lawyers, policymakers, foundation, and charities on strategies for reducing negative human rights impacts on supply-chain personnel. Ms. Windham Stewart was formerly a member of the American Bar Association Business Law Section Working Group to Draft Model Contract Clauses to Protect Workers in International Supply Chains.

ARGUMENT

IN EVALUATING SMART APPAREL’S CLAIM THAT NORDSTROM CANCELED ITS PURCHASE ORDERS IN BAD FAITH, THIS COURT SHOULD TAKE INTO ACCOUNT THAT NORDSTROM PROMISED TO UPHOLD THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS YET EXECUTED THE CANCELLATION IN A MANNER THAT VIOLATED THOSE PRINCIPLES

A. When Buyers Abruptly Terminate Contracts With Their Suppliers, They May Inadvertently—But Significantly—Harm Workers Throughout The Supply Chain

When buyers abruptly terminate contracts with their suppliers, the suppliers’ workers suffer. So, too, do workers employed by companies further upstream on the supply chain. The cause-and-effect relationship is straightforward: Affected supply-side businesses lose money; because they lose money, they cannot afford to retain all of their workers; they terminate workers, sometimes unlawfully denying them wages due for work already completed; and the terminated workers then find themselves struggling to make ends meet—often with little warning. This phenomenon permeates all industries and all sectors of the economy. *See, e.g.,* Kelly Stroh, *UAW Strike: How Auto Supply Chain Managers Can Mitigate Disruption*, Supply Chain Dive (Sept. 20, 2023), <https://www.supplychaindive.com/news/uaw-strike-how-auto-supply-chain-managers-can-mitigate-disruption/694250/> (automobile industry);

Jean Marie Layton, *Furniture Industry Pain Continues: Layoffs and Turbulence Hitting the Market*, Furniture Today (Sept. 12, 2023), <https://www.furnituretoday.com/financial/furniture-industry-pain-continues-layoffs-and-turbulence-hitting-the-market/> (furniture industry); David Manners, *Packaging Lead Time 50+ Weeks*, Electronics Weekly (Apr. 7, 2022), <https://www.electronicweekly.com/news/business/packaging-lead-time-50-weeks-2022-04/> (electronics industry). And it has the potential to wreak havoc on a massive scale; globally, approximately 450 million people work on a supply chain. United Nations Industrial Development Organization, *UNIDO and Sustainable Supply Chains*, at 1 (Aug. 2023), https://www.unido.org/sites/default/files/unido-publications/2023-11/UNIDO%20and%20Sustainable%20Supply%20Chains_0.pdf.

The phenomenon was on particularly vivid display in the apparel industry during the height of the COVID-19 pandemic. *See generally* Mark Anner, *Power Relations in Global Supply Chains and the Unequal Distribution of Costs During Crises: Abandoning Garment Suppliers and Workers During the COVID-19 Pandemic*, 161 Int'l Labour Rev. 59 (2022); Mark Anner, *Leveraging Desperation: Apparel Brands'*

Purchasing Practices During Covid-19 (Penn State Center for Global Workers' Rights Research Report) (Oct. 16, 2020), <https://ler.la.psu.edu/wp-content/uploads/sites/4/2022/04/Leveraging-Deoperation-October-16-2020.pdf>. Around the world, there was a sudden collapse of apparel demand. Mark Anner, *Unpaid Billions: Trade Data Show Apparel Order Volume and Prices Plummeted through June, Driven by Brands' Refusal to Pay for Goods They Asked Suppliers to Make* (Penn State Center for Global Workers' Rights Research Report), at 1 (Oct. 6, 2020), <https://ler.la.psu.edu/wp-content/uploads/sites/4/2022/04/Unpaid-Billions-October-6-2020.pdf>. As a result, many affected buyers canceled their orders. *Id.* at 1–2. Those buyers that did not cancel outright often refused to pay for completed or in-process orders, or, alternatively, demanded deep discounts. *Id.* at 2, 5. The results: From April 2020 to June 2020, United States buyers so frequently canceled orders or demanded price concessions that they took delivery of nearly \$10 billion less in apparel inventory as compared with the same period in 2019. *Id.* at 2. European buyers were responsible for a \$6.5 billion drop-off. *Id.*

The behavior of buyers in the United States, Europe, and elsewhere was no doubt enabled, to a degree, by the payment structure that had long pervaded the apparel industry well before COVID-19 took hold: a system in which suppliers traditionally bear the up-front cost of production and buyers pay nothing until after suppliers ship the goods. Anner, *Unpaid Billions*, at 1. But the consequences were devastating all the same. Supply-side workers lost their jobs in droves. And millions of workers were even denied the wages that were legally owed to them for work that they had already completed. Business and Human Rights Resource Centre, *Wage Theft and Pandemic Profits*, at 3 (Mar. 2021), https://media.business-humanrights.org/media/documents/Unpaid_wages_v9.pdf. Professor Mark Anner, a nationally recognized scholar of workers' rights in supply chains, estimated that more than \$1.6 billion in wages of garment-production workers in the United States and in Europe was lost between April and June 2020 as a result of buyer-side order cancellations and demands for price concessions. Anner, *Unpaid Billions*, at 5; see also Mei-Ling McNamara, *World's Garment Workers Face Ruin as Fashion Brands Refuse to Pay \$16bn*, *The Guardian*, Oct. 8, 2008,

<https://www.theguardian.com/global-development/2020/oct/08/worlds-garment-workers-face-ruin-as-fashion-brands-refuse-to-pay-16bn>.

In Bangladesh, a country that is home to a large amount of clothing production, the situation was especially dire. *See generally* Mark Anner, *Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains* (Penn State Center for Global Workers' Rights Research Report) (Mar. 27, 2020), https://ler.la.psu.edu/wp-content/uploads/sites/4/2023/11/Abandoned_CGWR-WRCApril12020-2.pdf. In March 2020, more than half of Bangladesh suppliers saw buyers cancel all or most of the purchase orders that they had earlier placed, including all or most orders that had already been fulfilled or were on the verge of fulfillment. *Id.* at 1. Factories shut down *en masse*. *Id.* And more than one million workers were fired or furloughed. *Id.* at 2. Many of those workers had no savings to help them weather the consequences of unemployment. *Id.* at 6. Further, the government's tax revenue was so low that it could not meaningfully step in with material support. *Id.* at 7. The concomitant public health crisis that the unemployed workers (like everyone else) had to navigate made their predicaments even worse still. *Id.*

The COVID-19 purchase order cancellations that plagued the apparel industry are the latest and perhaps the most extreme modern examples of the negative effects that buyer cancellations can have upon supply-side workers. But cancellations impose harm on supply-side workers even when they occur on a smaller scale. In virtually any scenario involving abrupt purchase order cancellations in a low-wage sector such as garment manufacturing, there is a heightened risk of outsized adverse impacts on supply-chain workers. See Dadush, *Contracting for Human Rights*, at 1539–1540; see also Jeffrey Vogt et al., *Farce Majeure: How Global Apparel Brands are Using the COVID-19 Pandemic to Stiff Suppliers and Abandon Workers* (European Center for Constitutional and Human Rights Policy Paper), at 3–4 (2020), https://www.ecchr.eu/fileadmin/ECCHR_PP_FARCE_MAJEURE.pdf.

Buyers need to understand this risk. As will be discussed next, when a buyer terminates a supply-chain contract without first considering or attempting to mitigate the severe impact on supply-chain workers, and thus sets the stage for the sort of turmoil discussed above, the buyer may well violate widely accepted—and globally authoritative—human rights standards.

B. Terminating Supply-Chain Contracts Without Considering Adverse Human Rights Impacts Likely Violates The United Nations Guiding Principles—The Authoritative Body Of Global Human Rights Standards

The globally authoritative body of international human rights standards is the United Nations Guiding Principles on Business and Human Rights. *See generally* United Nations, Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. In the words of the former United Nations High Commissioner for Human Rights, the Guiding Principles constitute “the global authoritative standard, providing a blueprint for the steps all states and businesses should take to uphold human rights.” Ra’ad Al Hussein, *Ethical Pursuit of Prosperity*, Law Society Gazette (Mar. 23, 2015), <https://www.lawgazette.co.uk/commentary-and-opinion/ethical-pursuit-of-prosperity/5047796.article>.³

The United Nations Guiding Principles are a set of 31 operating principles for governments and corporations. United Nations, Office of

³ Notably, Commissioner Al Hussein made this statement during his tenure as Commissioner.

the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, at 1–35. They are designed to help governments and corporations prevent, address, and remedy human rights abuses that may be associated with business operations. *Id.* at 1. The Guiding Principles were developed by the late John G. Ruggie, a professor at the Harvard University Kennedy School of Government who was appointed as the Special Representative of the United Nations Secretary General on Business and Human Rights. United Nations, Office of the High Commissioner for Human Rights, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, at 5 (2014), https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf. Professor Ruggie formulated the Guiding Principles over the course of six years of research and investigation into the impact of business activities on human rights. *Id.* The Guiding Principles have been called “the leading international BHR instrument,” referring to norms concerning business and human rights. Sarah Joseph & Joanna Kyriakakis, *From Soft Law to Hard Law in Business and Human Rights and the Challenge of Corporate Power*, 36 *Leiden J. Int’l L.* 335, 340 (2023).

The United Nations Guiding Principles are founded on three “pillars”: (1) the legal duty of states to protect persons from human rights abuse by third parties, including by businesses; (2) the responsibility of businesses to respect human rights (*i.e.*, to not infringe on human rights) in their operations and value chains; and (3) the need for greater access to remedy for stakeholders whose human rights have been abused by businesses. United Nations, Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, at 1. The principles founded upon the second pillar are most relevant here. Among those principles, businesses must “[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.” *Id.* at 14 (Principle 13). Likewise, businesses must “[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” *Id.* (Principle 13).

And logically, before businesses can avoid or mitigate adverse human rights impacts, they must undertake the due diligence necessary to determine what adverse impacts they risk generating or contributing

to, obtaining input from all potentially affected stakeholders, *i.e.*, all persons “whose human rights ha[ve] been [or may be] affected by an enterprise’s operations, products or services.” United Nations, Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, at 8 (2012), https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf. In that regard, the United Nations Guiding Principles direct businesses to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.” United Nations, Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, at 19 (Principle 18). The process should be a deliberate one in which businesses “[d]raw on internal and/or independent external human rights expertise” and “[i]nvolve meaningful consultation with potentially affected groups and other relevant stakeholders.” *Id.* (Principle 18). Upon completing the due diligence process, businesses should “take appropriate action,” “track the effectiveness of their response,” and “be prepared to communicate [their efforts] externally.” *Id.* at 20–23 (Principles 19–21).

The United Nations Office of the High Commissioner for Human Rights—the primary office within the United Nations tasked with promoting and protecting human rights—has issued guidance interpreting the Guiding Principles as they apply to “challenging contexts,” including decision points that will invariably involve some adverse human rights impacts no matter what course of action is selected. *See generally* United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting* (Aug. 2023), <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>.⁴ “Decisions regarding whether or not to remain in a challenging operating environment, and how best to respond to a deteriorating human rights situation, are rarely, if ever, straightforward,” the Office of the High Commissioner acknowledges. *Id.* at 2. But there is a recognized starting point for making those decisions:

⁴ The Office of the High Commissioner for Human Rights is tasked with issuing authoritative interpretations of the United Nations Guiding Principles, as well as providing relevant stakeholders with substantive expertise, technical assistance, and other advice on international human rights standards and principles. United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 1 n.1.

the baseline proposition that “the [Guiding Principles] encourage engagement over disengagement,” *i.e.*, “staying and using [the business’s] leverage to achieve change, rather than simply disengaging from problematic relationships or contexts.” *Id.*

Consistent with that baseline proposition, the Guiding Principles “do not *per se* require a business enterprise to exit” any and all “[s]ituations in which conditions deteriorate” from a human rights perspective. United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 7. There is “not necessarily * * * a need to shut down operations or end a business relationship through which [the corporation at issue] has contributed to harm.” *Id.* at 8. Instead, the corporate enterprise should take a course of action informed by a variety of factors, including “the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.” *Id.* (quoting United Nations, Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, at 21–22).

Along those lines, “[t]he possibility that the consequences of exit could lead to severe adverse human rights impacts should provoke further analysis from the enterprise concerned as to whether exiting is the responsible thing to do.” United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 9. “If a business is considering ending a relationship, the decision to end the relationship should be the focus of a separate and distinct risk assessment exercise” in which the business evaluates “any adverse impacts that may result from the termination of the relationship and the manner in which it is done.” *Id.* at 12–13. “Businesses should consider the full scope of human rights—economic, social and cultural rights as well as civil and political rights—relating to all those who may be affected, while paying special attention to particular impacts on those who may be at heightened risk of vulnerability or marginalization.” *Id.* at 13. In particular, “[a] key consideration should be the extent to which the livelihoods of workers or communities depend on the business relationship remaining operational,” such as may be the case “in countries with low economic development and/or poor human rights records.” *Id.*

And in all events, adherence to the Guiding Principles demands that “before considering ending relationships, * * * entities with which an enterprise has a business relationship should be given notice and opportunities to correct and remedy adverse impacts, with appropriate escalation.” United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 10.

It follows that, under the Guiding Principles, a buyer should not terminate a supply contract immediately and reflexively upon discovering that the supplier has been associated with human rights harms, even if, as a matter of ordinary contract law, the buyer has the right to do so, such as by invoking a *force majeure* clause. Sherman, *Irresponsible Exit*, at 129 (observing that “[j]ettisoning purchase orders * * *, without first considering or attempting to mitigate the likely severe harm to vulnerable workers, is inconsistent with the [Guiding Principles]”). Instead, the buyer should conduct a context-specific analysis with due consideration for the adverse human rights impacts that termination might have upon the supplier’s employees as well as other supply-chain workers. *Id.* The buyer should assess its leverage over the supplier, how crucial the relationship is to the buyer, the severity of

the alleged abuse taking place on the supply side, and the likelihood that terminating the relationship with the supplier would *itself* generate adverse human rights consequences. *Id.* Where the buyer is unable to build or use leverage over the supplier to cause the supplier to cease its offending behavior, the buyer may seriously consider terminating the contract. *Id.* However, termination should only be a last resort. *Id.*; *see also id.* at 132–133.

C. Nordstrom May Have Violated Its Implied Duty Of Good Faith And Fair Dealing By Canceling The Purchase Orders In A Manner Grossly Inconsistent With The Guiding Principles—Principles It Had Committed To Uphold

On its website, Nordstrom publishes a “Human Rights Commitment.” Nordstrom, *Nordstrom Human Rights Commitment*, <https://n.nordstrommedia.com/id/9ddcdbff-4c69-4d5c-b9a8-7d0837f010b2.pdf>. “Since Nordstrom was founded in 1901, one of our goals has been to ‘leave it better than we found it,’” the statement begins. *Id.* at 1. “Part of this means taking care of our communities, including respecting human rights.” *Id.* Nordstrom professes a “commit[ment] to respecting *all* human rights.” *Id.* (emphasis added). Among other things, the company commits to respecting human rights “as articulated in * * * the

United Nations Guiding Principles on Business and Human Rights”—the standards discussed in detail above. *Id.*

Nordstrom’s Human Rights Commitment singles-out, for special mention, “HUMAN RIGHTS IN OUR SUPPLY CHAIN.” Nordstrom, *Nordstrom Human Rights Commitment*, at 2. The company acknowledges that it “has a responsibility to respect the rights of the people who make the products we sell.” *Id.* The company has a “Social Responsibility team” that “addresses issues that impact factory workers and their communities.” *Id.* “Our goal is to work together with our suppliers to promote compliance in their facilities, develop sustainable management systems and support worker well-being.” *Id.* And Nordstrom appears to recognize that those efforts demand bespoke, case-by-case solutions, and not a cookie-cutter approach, in light of the “complexity” that characterizes “human rights issues in [its] industry.” *Id.*

Nordstrom’s Human Rights Commitment formed part of the backdrop against which Smart Apparel contracted with Nordstrom in the purchase orders at issue in this appeal, both as a freestanding commitment by Nordstrom and as part and parcel of the contractual

relationship itself. The purchase orders incorporate a rider, entitled “PURCHASE ORDER TERMS AND CONDITIONS.” ER 51–58. That rider refers to “the Nordstrom Partner Code of Conduct available at nordstrom.com/browse/nordstrom-cares/strategy-governance-reporting/partnership-guidelines,” which outlines standards to which Nordstrom holds its suppliers. ER 51. The Partner Code of Conduct provides that suppliers must “adhere to * * * the Nordstrom Human Rights Commitment” and “comply with applicable sections of the United Nations Guiding Principles on Business and Human Rights.” Nordstrom, *Nordstrom Partner Code of Conduct*, at 3, <https://n.nordstrommedia.com/id/c6c42957-3800-4126-a3cd-0b9ff69772d7.pdf>.⁵ Further, the Partner Code of Conduct characterizes those requirements as a reflection of Nordstrom’s insistence that its suppliers “*share our commitment to * * * responsible business principles.*” *Id.* at 2 (emphasis added).

⁵ Because, as described in the main-text paragraph to which this footnote is appended, Nordstrom’s Partner Code of Conduct and its Human Rights Commitment are incorporated by reference into the PURCHASE ORDER TERMS AND CONDITIONS document attached to the complaint, the Partner Code of Conduct and the Human Rights Commitment are properly considered by this Court when reviewing the district court’s decision dismissing Smart Apparel’s complaint under Federal Rule of Civil Procedure 12(b)(6). *E.g.*, *Zenoff v. Corrento Therapeutics, Inc.*, 97 F.4th 634, 641 (9th Cir. 2024).

In other words, the Partner Code of Conduct—like the Human Rights Commitment itself—communicates to suppliers that Nordstrom is committed to, and will abide by, the United Nations Guiding Principles on Business and Human Rights (just as Nordstrom demands of its suppliers). Although the Guiding Principles are “soft law” in that they are not legally binding in and of themselves, Joseph & Kyriakakis, *From Soft Law to Hard Law*, at 341–342, Nordstrom has proactively undertaken to bind itself to them in its buyer capacity.

The facts as alleged in Smart Apparel’s complaint suggest that Nordstrom may well have breached the duty of good faith and fair dealing implied by the purchase orders it had placed with Smart Apparel by canceling those purchase orders, without warning to Smart Apparel, in a way that ran afoul of the Guiding Principles. *See, e.g., Badgett v. Security State Bank*, 807 P.2d 356, 360 (Wash. 1991) (en banc). Even though Nordstrom purportedly canceled the purchase orders out of *its own concern* about human rights abuses—Smart Apparel’s parent company’s supposed use of North Korean forced labor in its supply chain, in violation of CAATSA—Nordstrom violated the human rights principles that it had

undertaken to uphold, and that Smart Apparel, in entering into the purchase orders, understood Nordstrom had undertaken to uphold.

According to Smart Apparel's complaint filed in the district court, on January 13, 2023, Nordstrom, via e-mail, informed Smart Apparel that Nordstrom was "canceling all outstanding orders for which the product has not cleared customs in the destination country as of the time of this email." ER 33. Those orders comprised more than 342,000 units of merchandise, collectively valued at more than \$6.75 million. ER 33. Nordstrom purported to justify canceling the orders on the ground that it had "compelling reasons to believe that the manufacture of Smart Apparel products has involved violations of our Purchase Order Terms and Conditions, including the provisions regarding forced labor." ER 34. The source of Nordstrom's belief: a press release, issued by United States Customs and Border Protection, stating that a federal investigation suggested that Smart Apparel's parent company "uses North Korean labor in its supply chains in violation of CAATSA." ER 35 (alteration marks omitted).

Before canceling the purchase orders, Nordstrom did not investigate whether, in fact, Smart Apparel's parent used North Korean

forced labor as the press release had indicated. ER 34. It did not even so much as inquire with Smart Apparel regarding the press release. ER 34. Indeed, just days after Nordstrom canceled the orders, Smart Apparel representatives, including one from Asia, traveled to Seattle to meet with Nordstrom personnel there and showed that the supply chain used for the orders did not make use of North Korean labor—but Nordstrom adhered to the cancellations anyway. ER 42. Nordstrom also ignored the results of a subsequent independent audit of every facility in Smart Apparel’s corporate parent’s supply chain—every single one, including facilities *not* used for manufacturing the merchandise that Nordstrom had contracted to purchase from Smart Apparel. ER 42. The audit found no forced labor or migrant workers, but when Smart Apparel brought that result to Nordstrom’s attention, Nordstrom stood pat and would not budge. ER 42.

Nordstrom violated the United Nations Guiding Principles by canceling the purchase orders with Smart Apparel under those circumstances.

First, Nordstrom deviated from the fundamental procedural fairness that the Guiding Principles call for. Even accepting, for the

moment, the truth of the statements contained within the United States Customs and Border Patrol press release, Nordstrom's sudden cancellation flies in the face of the proposition that "entities with which an enterprise has a business relationship should be given notice and opportunities to correct and remedy adverse impacts." United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 10. Nordstrom provided Smart Apparel zero notice whatsoever. Indeed, Nordstrom would not even engage with Smart Apparel *after* Smart Apparel proactively demonstrated that no labor abuses had occurred in connection with the goods at issue or any other goods within the supply chain of Smart Apparel's corporate parent. *See* ER 42.

Second, above and beyond the failure to offer Smart Apparel (or any entity in Smart Apparel's corporate family) notice and an opportunity to correct the alleged issues, there is no indication that Nordstrom undertook any evaluation of "whether terminating the relationship with [Smart Apparel] itself would have adverse human rights consequences." United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 8. Nordstrom,

as a longtime fashion retailer, surely knew or had reason to know of the adverse consequences that apparel suppliers were facing as a result of order cancellations. The real-time reports leading up to Nordstrom's January 2023 cancellations were legion. *See, e.g.*, Jasmin Malik Chua, *Brands Urged Not to "Disengage Abruptly" from Sri Lanka*, Sourcing Journal (Aug. 10, 2022), <https://sourcingjournal.com/topics/labor/sri-lanka-garment-workers-jaaf-aafa-ethical-trading-initiative-fair-wear-361056/>; Akhil Duggar Jain, *Pandemic Induced Supply Chain Disruption in the Fashion World*, Financial Express (June 20, 2022), <https://www.financialexpress.com/business/industry-pandemic-induced-supply-chain-disruption-in-the-fashion-world-2566451/>. There was far more than a mere "possibility that the consequences of exit could lead to severe adverse human rights impacts," yet Nordstrom does not appear to have undertaken *any* "further analysis * * * as to whether exiting [was] the responsible thing to do." United Nations, Office of the High Commissioner for Human Rights, *Business and Human Rights in Challenging Contexts*, at 9. In particular, Nordstrom appears not to have considered, at all, "the extent to which the livelihoods of workers or communities depend on the business relationship remaining

operational,” such as may be the case “in countries with low economic development and/or poor human rights records.” *Id.* at 13. *A fortiori*, Nordstrom evidently did not consider whether, as a risk-benefit matter, canceling the purchase orders with Smart Apparel would do more harm than good from a human rights perspective.

To be clear: *Amici* take no position on whether Nordstrom had, at least at first blush, the express contractual right to cancel the purchase orders with Smart Apparel. Assuming Nordstrom had that right, *amici* also take no position on whether, at the proverbial end of the day, canceling the purchase orders, rather than seeing them through, was indeed the better move as far as mitigating aggregate adverse human rights impact is concerned. Maybe it was; maybe it was not. *Amici*'s point in this brief is that Nordstrom violated the United Nations Guiding Principles in light of the way in which it executed the cancellations: suddenly, without any advance warning to Smart Apparel, without any apparent consideration of other alternatives, and without any apparent consideration of adverse human rights consequences that cancellation would cause (even if cancellation also may have stood to generate some human rights benefits).

Inasmuch as Smart Apparel entered into the at-issue purchase orders against the backdrop of Nordstrom's commitment to abide by the United Nations Guiding Principles, Nordstrom's cancellation—executed in a manner that violates those principles—may well have breached Nordstrom's implicit duty of good faith and fair dealing (on the facts as alleged in Smart Apparel's complaint).

CONCLUSION

This Court, in deciding whether Smart Apparel stated a cause of action for breach of the covenant of good faith and fair dealing implied by the at-issue purchase orders that had been placed by Nordstrom, should take into account Nordstrom's violation of the United Nations Guiding Principles in canceling those purchase orders as hastily as it did.

July 29, 2024

Respectfully submitted,

/s/ Bradley M. Wanner

Bradley M. Wanner
HARRIS BEACH PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Telephone: (518) 427-9700
bwanner@harrisbeach.com

/s/ Brian D. Ginsberg

Brian D. Ginsberg

HARRIS BEACH PLLC

445 Hamilton Avenue, Suite 1206

White Plains, New York 10601

Telephone: (914) 683-1200

bginsberg@harrisbeach.com

Counsel for Amici Curiae

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, including words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties.
 - a party or parties are filing a single brief in response to multiple briefs.
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated .
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov