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# Client Alert

Business Information for Clients and Friends of Shumaker, Loop & Kendrick, LLP

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### **Global Supply Chain Risk - Human Trafficking and Slavery**

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In light of the California Transparency in Supply Chains Act, the U.K. Modern Slavery Act, The G7 June, 2015 Declaration on supply chain transparency, and the recently filed California class action lawsuits against Costco and Whole Foods, suppliers need to understand the expanded supply chain risk.

#### SUPPLY CHAIN TRANSPARENCY STATUTES

#### 1. The California Transparency in Supply Chains Act

The California Transparency in Supply Chain Act (the "CTSC") became effective in 2012, and broadly applies to:

- A retail seller or manufacturer.
- Doing business in California.
- With \$100 million or more of annual revenues.

The CTSC "minimum" required disclosure by such companies includes:

- That the company is engaging in verification of supply chains regarding human trafficking and slavery.
- That the company conducts supplier audits to evaluate compliance.
- That the company requires certifications of compliance from direct suppliers.
- That the company has set developed internal accountability standards.
- That the company conducts internal training regarding supply chain compliance regarding human trafficking and slavery.

The CTSC also requires companies to make a public representation on the foregoing via a homepage disclosure on the company's website.

#### 2. The U.K. Modern Slavery Act

The U.K. Modern Slavery Act (the "U.K. Act") was passed on March 26, 2015, and becomes effective this month.

Section 54 of the Act relates to "Supply Chain Compliance" which applies to:

- All commercial organizations.
- Wherever incorporated.
- Which supplies goods or services.
- Carries on a business or part of a business in the U.K.
- With annual turnover (revenue) of \$36 million BPS (about \$55 million).

Like the CTSC, the U.K. Act requires website (homepage) disclosure detailing the company's preventative steps to insure no human trafficking or slavery in the company's supply chain.

In addition, the U.K. Act requires that the disclosure statement be approved by the company's board of directors.

Moreover, the disclosure statement "may" include information on:

- The company's structure, its business and its supply chains.
- The company's policies on slavery and human trafficking.
- The parts of the company's business that are at risk, and the steps to assess and manage the risk.
- The effectiveness of the company's policies in insuring that slavery and human trafficking is not taking place.
- That the company is providing internal training to insure supply chain compliance.

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#### THE CLASS ACTION LAWSUITS

#### 1. Costco

On August 19, 2015, a class action was filed against Costco in the United States District Court, Northern District of California, largely arising in connection with seafood Costco procures from Thailand. The Costco complaint contains approximately 40 pages of narrative descriptions and photographs regarding slavery and human trafficking generally.

Since the CTSC does not provide a private right of action (rather it is enforced by the State of California), the legal claims asserted against Costco could be viewed as "tagalong" claims to the tenets of the CTSC, including false advertising and representations as well as violations of various consumer protection laws.

The Costco plaintiffs requested relief in the form of:

- Class certification
- Injunctive relief
- Restitution
- Costs and attorneys' fees
- Jury trial

#### 2. Whole Foods

On September 21, 2015, PETA (People for the Ethical Treatment of Animals, Inc.) and a class action plaintiff filed a class action complaint against Whole Foods for violation of consumer protection laws, arising largely based on Whole Foods' premium pricing for meat products sourced with a high standard for animal welfare and treatment. A key component of the plaintiff's allegations relate to Whole Foods' "5-Step Animal Welfare Rating". The complaint includes over 20 pages of narrative regarding incidents of alleged failure to comply with animal welfare standards.

The legal claims asserted against Whole Foods include:

- Violation of various consumer protection laws for false advertising.
- Violation of false advertising under California law.

The complaint seeks the following relief from Whole Foods:

- Class certification.
- Declaration that Whole Foods' conduct is unlawful, unfair and/or deceptive.

- Injunction of continuing its advertising.
- Restitution.
- Costs and attorneys' fees.
- Jury trial.

#### TAKEAWAYS

- Given that the G7<sup>1</sup> Leaders' Declaration from the June, 2015 meeting in Germany included supply chain transparency and accountability as a priority, it is probable that additional supply chain compliance statutes will be enacted in the future, to address human trafficking and slavery, as well as other concerns. It is clear that governments are increasingly using their legislative and regulatory authority to compel companies to have "skin in the game" in resolving global social concerns.
- 2. With the intersection of valid global issues, an aggressive plaintiff's bar and companies with deep pockets, it is predicable that more class action lawsuits will be filed, at least regarding high profile companies who deal directly with consumers.
- 3. It remains to be seen how aggressive California, the U.K., and other governments regarding future legislation will be in enforcing of these laws.
- 4. Companies should identify the level of risk given its products, industry, supply chain sources and countries of origin. For example, if a company's supply chain is based largely upon direct supplier relationships, it will be relatively easier to manage compliance by the supplier and minimize risk. If on the other hand, a company's suppliers in turn have multiple layers of sub-suppliers, particularly from at risk countries or in at risk industries, compliance will be more complicated, and likely more expensive.
- Once supply risk is evaluated, all companies should consider implementing carefully designed supply chain policies to manage and minimize risk.
- 6. It will also be interesting to see if supply chain insurance products adapt to allow companies to hedge the additional risks created by these developments.

We hope you found this useful and informative, and feel free to share this with others in your company. Please contact us if you have any questions about this, or any other matter.

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<sup>&</sup>lt;sup>1</sup>G7 member countries include Germany, France, United Kingdom, Italy, Japan, Canada, the United States, and the European Union.