

# Contract Cancellation and the UN Guiding Principles on Business and Human Rights: *Responsible Contracting Project's Friend of Court Brief Before the U.S. Ninth Circuit Court of Appeals*

*"When buyers abruptly cancel purchase orders that they have placed with suppliers, ....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"*

These words are from the opening of a friend of the court (*amici curiae*) brief filed by the Responsible Contracting Project, John Sherman (its Senior Advisor) Sarah Dadush (its director and co-founder) and Olivia Windham Stewart (its co-founder) on July 29, 2024, in the U.S. Ninth Circuit Court of Appeals in Seattle, Washington<sup>1</sup>. A copy of the brief is available [here](#).

Brian Ginsberg and Bradley Wanner, of the appellate practice team at the law firm of Harris Beach filed the brief as pro bono counsel.

## The Case

The case arose from the cancellation in 2023 by a well-known men's garment retailer, of nearly \$7 million worth of purchase orders it had placed with its supplier, purportedly out of concern that North Korean forced labor was used at some point along the supply chain of supplier's parent company. According to the supplier's legal complaint, the garment retailer cancelled the purchase orders abruptly, ignoring evidence presented by the supplier that there was in fact no forced labor anywhere in its supply chain. The supplier alleged that the garment retailer had cancelled the purchase orders unfairly and in bad faith.

*"This is the first case to my knowledge where a court is being asked to hold contracting parties accountable for their public and contractual commitments to respect human rights under the Guiding Principles. It's an example of the developing lex mercatoria, or private commercial law, of business and human rights."*

--John Sherman, RCP Senior Advisor

## Cancellation as a Last Resort

In their brief, RCP et al pointed out that the authoritative UN Guiding Principles on Business and Human Rights (Guiding Principles) were incorporated in the apparel retailer's human rights policy commitment

and supply chain contract. Under the Guiding Principles, a buyer must weigh the human rights impact on supply chain workers of cancellation before considering whether to cancel a supply chain contract, how those impacts can be mitigated, and what leverage the buyer can use, even where a buyer has the contractual right to cancel.

## Impacts of Cancellation on Workers.

The brief notes that during the COVID 19 pandemic, the abrupt cancellation of supply chain contracts by Western buyers exercising their contractual *force majeure* rights led to the loss of jobs of droves of vulnerable supply chain workers, many of whom had no savings, no pension, or access to a social safety net. Millions of these workers were denied the wages legally owed to them for work they already done.

As a result, under the Guiding Principles, severing a business relationship with an enterprise alleged to have involved in human rights abuses is a complex and fraught endeavor that demands a thought-out response, rather than knee-jerk action.

The brief therefore urges the Ninth Circuit to take the garment brand's violation of the Guiding Principles into account when evaluating supplier's claim that buyer cancelled the purchase orders in bad faith.<sup>2</sup>

*"I hope that our brief will inspire companies to sync their public human right commitments with their supply chain contracts and procurement practices. It is time for buyers and suppliers to move from a top down, compliance-based contract regime based on representations on representations and warranties to a contract regime based on a shared responsibility for human rights impacts."*

--Sarah Dadush, RCP Director and Co-Founder

*In the end, what matters is the potential human rights impact of business actions on supply chain workers. Under the Guiding Principles, this impact cannot be ignored when a buyer proposes to cancel a supply chain contract, even if it has the contractual right to do so."*

--Olivia Windham Stewart, RCP Co-Founder

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<sup>1</sup> The brief represents only the personal views of *amici curiae*, and not necessarily the views of any person or institution with whom they have been or are currently employed, affiliated, or associated.

<sup>2</sup> The brief takes no position as to whether termination under the contract was justified or whether, and the extent to which, the human rights of supply workers were impacted by the cancellation.