

Independent Investigation

Preliminary Report: Apple Tree El Salvador S.A.

**San Marcos Free Zone, El Salvador
September 1-3, 2015**



FAIR LABOR
ASSOCIATION™

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I. Scope and investigation methodology

This report contains the results of an independent investigation conducted by the Fair Labor Association (FLA) at Apple Tree El Salvador S.A. (hereinafter referred to as the factory or Apple Tree), San Salvador, El Salvador, in response to a Third Party Complaint filed by *Sindicato Salvadoreño de Industrias Textiles y Similares* (hereinafter referred to as SSINT or the union) with the FLA, on June 4, 2015, alleging violations of freedom of association to the detriment of one of the union's founders.

Specifically, the investigator focused on verifying and documenting the following:

1. Reasons and conditions surrounding the employment termination of the SSINT founder.
2. Review of the procedure followed by Apple Tree's management for the employment termination of the SSINT founder, including documentation regarding severance payment and the worker's personnel file. The investigator also inquired about the coincidence in timing between the union's recognition and the termination of employment of the SSINT founder.
3. Factory practices for the payment of severance and employee termination benefits, whether payments are normally made in cash or through check, bank transfer, etc. The investigator reviewed personnel records in order to identify patterns.
4. Allegations related to the offer of a new job (apparently at another factory) by the Human Resources Manager to the SSINT founder after her termination, and whether this is congruent with the factory's policies and procedures.
5. Employment reductions implemented by the factory in 2015, allegedly, due to a reduction in customer orders, focusing on the period of time during which a decision was made about the termination of the SSINT founder.
6. Review of documentation issued by the Ministry of Labor (for example, documents related to union registrations, inspection acts, etc.) pertinent to the case..

The following companies affiliated with the FLA are currently Apple Tree buyers: *Dallas Cowboys Merchandising*, *Delta Apparel* and *VF Corporation*.

Between September 1 and 3, 2015, an investigator for the FLA conducted interviews with various interested parties linked to the case, such as delegates from the Ministry of Labor in San Salvador and SSINT union leaders, including the terminated founding member.

Furthermore, a one-day *in situ* visit was conducted at Apple Tree's facilities, located in the San Marcos Free Zone, to carry out interviews with workers and management, review documents and execute a visual inspection of the plant. In total the following were interviewed: 10 workers from all departments, 4 members of worker organizations present at the company, 2 supervisors, 2 SSINT union representatives, 1 representative of the *Federación de Unidad de Trabajadoras y Trabajadores de El Salvador* (FUERSA) and the SSINT founder terminated from Apple Tree.

The investigation process additionally included: the review of official documents from the Ministry of Labor and Social Security (hereinafter Ministry of Labor or MTPS) and internal factory documents.

All information sources consulted (interviews, reviewed documents, etc.) are presented in Appendix 1 to this document.

II. Background

On May 16, 2015 the union *Sindicato Salvadoreño de Industrias Textiles y Similares* was constituted as an industry union by 40 founding members, from the companies F&D S.A. de C.V. and Apple Tree S.A. de C.V.

According to the Act of the Union's Constitution, the Apple Tree employee who was subject to termination of employment appears as a founding member of the SSINT.

SSINT union representatives presented the Ministry of Labor with a request for recognition of legal status on May 27 of the current year, meeting all requirements established by Salvadorian labor legislation.

The Ministry of Labor issued Notice DM.DNOS. 189/2015 to the employer, in compliance with article 219 paragraph 2 of the Labor Code, with the objective that the Apple Tree Legal Representative certify that the SSINT founding member was a salaried employee. In that written notice the employer was informed that she was a founding member of SSINT. This Notice was served to the employer at 11:10 on June 2, 2015 according to the file from the National Department of Social Organizations.

Article 248 paragraph a) of the Labor Code, establishes a guarantee of protection to promoters of the constitution of a union, for a period of 60 days from the date that the Department of Social Organizations notifies the employer of the roster of promoters. As such, as of June 2, the founder of SSINT enjoyed immunity (*fuero sindical*).

On June 2, 2015, the Legal Representative for Apple Tree responded to the above-mentioned Notice, confirming that the SSINT founder worked at the company as an operator. This communication was presented to the Ministry of Labor at 14:20 on June 3, 2015.

On June 3, 2015, Apple Tree management terminated the employment relationship with the SSINT founder, alleging that the worker had presented an irrevocable resignation. The company presented as evidence of the resignation a notarized act signed and sealed by the Legal Representative for Apple Tree dated June 3, along with proof of payment for the worked days between May 25 and June 3 of 2015 and the proportional labor accruals (Christmas bonus, vacation and severance).

The worker and the union organization requested the intervention of the Ministry of Labor to verify the termination of the SSINT founder by Apple Tree.

The case was admitted by Labor Inspection under file number D9916-UD-06-15-Especial-SS. The first inspection was conducted on June 18, 2015; the responsible inspector confirmed the allegations by the parties but did not issue any conclusion.

On June 24, the SSINT founder accused the Human Resources Manager and the Legal Representative for the company of the crime of Aggravated Forgery and Use and Possession of Forged Documents. This process is currently ongoing. The SSINT founder stated that she had not signed the resignation letter and that the signature that appeared on said document had been forged.

On July 2, 2015, the General Directorate for Labor Inspection, through the Special Unit for the Prevention of Labor Discrimination, issued a Special Inspection Act. It resolved to not issue a ruling regarding the termination of the worker since a resignation document apparently signed by the worker existed in a Notarized Act.

On August 10, 2015, the Ministry of Labor granted legal personality to the union with 38 founding members.

As previously mentioned, the SSINT filed a Third Party Complaint with the FLA, alleging the termination of a founding member caused by union activities in violation of Salvadoran laws.

In response to that complaint, the FLA commissioned the present investigation from the CSO Engagement Manager for the Americas, Jessica Vásquez, the results of which are presented below.

III. Results of the Investigation

The following acts were corroborated by the FLA investigator:

1) The reasons and conditions of the termination of the employment relationship of the SSINT founder

As part of the Third Party Complaint, SSINT alleged that the SSINT founder was illegally terminated by the Human Resources Manager from Apple Tree due to her union affiliation.

In their defense, the Human Resources Manager and the company's Legal Representative informed that the SSINT founder had found a new job at a company closer to her residence, which motivated her resignation.

In an interview conducted off site with the SSINT founder, she stated that she never presented her irrevocable resignation; on the contrary, she stated that it was the Human Resources Manager for Apple Tree in a private meeting, who expressed that as of June 3 she was terminated due to employee cuts caused by a reduction in production orders at the company. In addition, it was several weeks before she found a new job at another company and is currently unemployed.

During individual interviews with two coworkers from the module in which the SSINT founder worked, they expressed that the worker showed up for work as usual on June 3 and was called by the supervisor to a meeting with the Human Resources Manager. After this meeting the SSINT union founder did not return to her workstation and never returned to work.

In addition, during interviews with the Human Resources team the investigator was unable to determine that the worker had voluntarily presented her resignation.

In the interviews with other workers at the company, including supervisors and representatives of the two worker organizations present at the factory, the FLA investigator did not find compelling evidence that sustains the voluntary resignation of the SSINT founder: none of the workers could confirm what occurred on June 3; their comments were limited to general explanations about what could have influenced the worker's decision or statements to the effect that their employment is too recent and they are unaware of the case.

Finally and as recorded in the Notarized Act, the SSINT founder did not begin her employment at another textile company until June 29, 2015, at a workplace in the International Free Trade Zone of Olocuilta, inaugurated on June 15 of that same year. This contradicts management's views that the worker resigned voluntarily because she had found a job at another workplace that was closer to her home. The workers stated that she applied for the job at Olocuilta on June 28 and started work on June 29.

From the review of payroll records and personnel files and the conduct of interviews, the investigator did not find evidence that during the months of May through June of 2015 there were any terminations due to a reduction of production orders.

Therefore, no evidence was found that indicates that the worker resigned voluntarily due to her finding a new job close to her residence.

2) Policies and procedures for the Apple Tree company in cases of contract termination and particularly the procedure followed in the case of the SSINT founder.

Representatives for SSINT expressed that an anomalous procedure was followed in the termination of their founder in which the Legal Representative had apparently incurred in forgery of a public document, by publicly authenticating the resignation of the SSINT founder in a Notarized Act in contradiction with national legislation.

In this section the FLA investigator will mention the results of the interviews with members of the company's Department of Human Resources and Accounting and the document analysis conducted based on the following evidence:

- Policies and procedures for termination of company contracts (dismissals and resignations).
- Personnel file for the SSINT founder.
- Notarized Act of irrevocable resignation of the SSINT founder dated June 3, 2015.
- Proof of payment of earned wages for the SSINT founder and for payment of labor accruals.
- 5 personnel files for workers hired during the months of March and April who worked in the same module as the SSINT founder.

- 38 personnel files for workers who resigned voluntarily from January to July 2015.
- 1 personnel file for a dismissed worker (the only case in 2015).

It was confirmed that the company does not have written procedures that set out the legal criteria, stages, steps and assigns responsibility for the termination of worker contracts, either by resignation or by dismissal with or without employer responsibility.

Faced with the lack of written procedures, the FLA investigator inquired about the systematic practices that to this date the company has been implementing for resignations during 2015 and compared them to the practices followed in the cases of dismissals of workers.

During the document review it was determined that in the cases of voluntary resignations, the workers sign a Notarized Act without the presence of the company's Legal Representative. The document signed is a previously-designed template that personnel from the Human Resources Management team fills out at the time that workers present their resignation. Of the 39 personnel records for contract terminations, 38 follow this pattern; the only one that contains the Legal Representative's signature and seal is the one for the SSINT founder.

Additionally, during the document review and interviews with personnel from Human Resources Management team who are involved in the process of the resignation of workers, it was confirmed that all Notarized Acts for voluntary resignations are collected during the year for their subsequent signing and sealing by the company's Legal Representative. Furthermore, from the interviews with other workers and members of worker organizations, it was confirmed that the lawyer is not regularly present at the company. The practice of not having a lawyer present during resignations was confirmed through interviews with workers.

Through a review of the payroll roster, the investigator established that during 2015, the factory Apple Tree has only dismissed one worker. In this case the company had the worker sign two receipts: one corresponding to payment of earned wages up to the date of dismissal and another corresponding to the payment of the proportional accruals of labor benefits (severance, Christmas bonus and vacations). However, in all cases of resignations analyzed, the only compensation received by the workers was payment for days worked before their resignation and consequently, the workers only

signed one receipt for payment of wages earned to the date of their resignation¹.

As previously mentioned, the SSINT founder, at the time of the contract termination received earned wages up to June 3 and the corresponding payment of the proportional accrual of labor benefits. This is the only case classified by the company as a voluntary resignation in 2015 in which the worker received the same compensation as if it had been a case of dismissal.

Two members of Human Resources Management team expressed that the payment of wages and benefits in the case of the SSINT founder corresponds to those made in cases of dismissals.

Upon questioning Apple Tree's Human Resources Manager and Vice-President regarding this situation, they mentioned that the case of the SSINT founder was a special case, given the seniority and good performance of the worker.

Regarding this statement by Apple Tree's Human Resources Manager and Vice-president, the FLA investigator determined that it is evident that seniority could not have been considered as a valid criteria, because the worker, whose case is the subject of this investigation, had only worked at Apple Tree for 2 months². Regarding the work performance of the worker, the investigator found in her personnel file a "follow-up form for the worker with an irregular evaluation" signed by the supervisor and Human Resources Manager, which mentions the apparent low productivity of the worker; this was the only file in which a written evaluation of this type was found in over 44 personnel records reviewed. In the interviews with the two supervisors, it was confirmed that performance evaluations of workers after hiring are not done in writing.

The above contradictions challenge the thesis held by Apple Tree's Management that the worker resigned voluntarily.

¹ It is important to mention that as of January 2015 the Regulatory Law for Voluntary Resignations went into effect. This law regulates the procedure that should be followed for the payment of a compensation of 50% of labor benefits in the case of voluntary resignations. In no cases has the company taken into account the dispositions of this law for the payment of the economic compensation that the law requires in these cases.

² The worker started her employment on March 30, 2015.

IV. Conclusions

- The current company's management system allows arbitrariness in workers' contract terminations processes, by not having established criteria and procedures to address any of the legal circumstances that may motivate the termination of an employment relationship. In addition, Apple Tree has not complied with the legal reforms regarding universal severance payments, as is established by the Regulatory Law for the Economic Compensation for Voluntary Resignation of Employment.
- Apple Tree was notified and informed by the Ministry of Labor that one of its workers was a founding member of the Salvadoran Union of Textile and Similar Industries (SSINT). Said notification occurred the day before the dismissal/resignation of the worker.
- The investigator observed various inconsistencies in the case of the termination of the union founder that put into question Management's view regarding her voluntary resignation.
- The gathered evidence pertaining to this investigation indicates that the dismissal of the SSINT founder constitutes a violation of the Constitution of the Republic of El Salvador, of the Labor Code of El Salvador, and of Conventions 87 and 98 of the ILO (ratified by the State of El Salvador), of the dispositions of Freedom of Association of the FLA Code of Conduct and of the following FLA Compliance Benchmarks: FOA.1, FOA2, FOA. 4.1, FOA. 5 and FOA.7³.

³ To view the contents of the FLA Compliance Benchmarks please consult the following link:
<http://www.fairlabor.org/our-work/labor-standards>

V. Recommendations

For Apple Tree Management:

1. Reinstate and compensate for lost wages the SSINT founder dismissed on June 3, 2015. It will be understood that the reinstatement includes the recognition of the worker's seniority from her first day of employment at the factory and that the worker will occupy a job position equal to the one held at the time of dismissal. The lost wages will be calculated from the date of dismissal until the date of reinstatement. Any payment disbursed pertaining to labor benefits as a consequence of the dismissal will not be considered as part of the lost wages and a refund of these will not be demanded.
2. Abstain from carrying out new dismissals or other acts of retaliation against workers based on the exercise of their rights to freedom of association. As part of termination procedures, institute a process of multiple approvals, including supervisors, production manager and HR manager.
3. Recognize the dismissed worker as a founding member of the SSINT and engage in dialogue with union representatives of the referred organization and with representatives of FUERSA.
4. Develop policies and procedures that regulate the termination of the employment relationship that comply with national legislation, the FLA Compliance Benchmarks and the customer's Codes of Conduct.
5. Review Apple Tree's policies regarding freedom of association and collective bargaining in order to guarantee that they comply with national legislation, FLA Compliance Benchmarks and customer Codes of Conduct.
6. Guarantee that all workers, supervisors, middle management and upper management are trained continuously regarding freedom of association.

For FLA-affiliated companies:

1. In collaboration with Apple Tree management, develop a remediation plan consistent with the recommendations for the factory outlined above, and follow up on compliance of the actions contained in said plan.
2. Verify the reinstatement and payment of lost wages of the above-mentioned worker, guaranteeing recognition of her job seniority and that the factory refrains from committing acts of retaliation against her.

VI. Appendix

Appendix 1: Information Sources

Conducted Interviews	Collective interviews with 2 representatives of the SSINT Board of Directors and with a representative of FUERSA.
	Interview with the SSINT founding member dismissed/who resigned in June 2015.
	Group interview with the Director General of Labor Inspection and the Chief of the Special Unit for Gender and Prevention of Labor Discrimination Acts.
	1 group interview with 4 active Apple Tree workers from the module where the SSINT founding member worked.
	1 group interview with 2 active Apple Tree co-workers from the SSINT founding member's module.
	2 interviews with active Apple Tree supervisors.
	2 interviews with representatives from the worker organizations affiliated to the El Salvador Union Federation (<i>Federación Sindical de El Salvador - FESS</i>) and the National Union Federation of Salvadoran Workers (<i>Federación Nacional Sindical de Trabajadores Salvadoreños-FENASTRAS</i>).
	Interviews with Apple Tree's Vice-president, Human Resources Manager, person responsible for payroll, Accountant and the company's Legal Representative.
Reviewed Documents	Constitution Act, documents identifying the founders, roster of the Provisional Board of Directors and SSINT Statutes.
	Certification of the complete file on the process put together by SSINT for the recognition of the union with the Ministry of Labor.

	Resolution of the recognition of juristic personality of SSINT, granted by the Ministry of Labor.
	Reports of inspection by the Ministry of Labor, from June 18 and July 2 relating to the investigation conducted at Apple Tree regarding the termination/resignation of the SSINT founding member.
	Company policies relating to non-discrimination and freedom of association.
	Personnel file of SSINT founder.
	Notarized Act of the irrevocable resignation of the SSINT founder Hernandez dated June 3, 2015.
	Proof of payment of earned wages and payment of labor accruals for the SSINT founder.
	5 personnel files for workers hired during the months of March/April and that are currently working in the same module as the SSINT founding member.
	38 personnel files for workers who voluntarily resigned between January and July of 2015.
	Personnel file for dismissed worker (only case in 2015).
	Certification of the criminal complaint of Aggravated Forgery and Use and Possession of Forged Documents filed by the SSINT founder dated June 24, 2015.
	Notarized Act dated June 24, 2015 containing the sworn statement of the SSINT founder regarding falsification of her signature on the voluntary resignation document presented by Apple Tree Management.
Sworn statement by the SSINT founder stating that she is employed at another company in the textile industry since June 29, 2015.	