



March 19, 2024

Ms. Kate Jelly
Labour Rights Researcher
Business and Human Rights Resource Centre
The Foundry, 17 Oval Way
London SE11 5RR
England

Dear Ms. Jelly,

Thank you for offering [Equitable Food Initiative](#) (EFI) the opportunity to respond to the allegations of labor abuse contained in the “Certified Exploitation” report, published in October 2023 by the Corporate Accountability Lab (CAL). These allegations are the latest in a series of concerns raised by the report’s author, James Daria, since he began conducting ethnographic research in the San Quintin region of Baja California in 2017. Daria has since worked to support the development of an independent farmworker union called [SINDJA](#), which arose from worker protests in 2015 against low wages and poor working conditions in the region.

EFI is a multi-stakeholder skill-building and certification organization that brings together farmworker unions, agricultural employers, major retailers and consumer organizations to seek “win-win” improvements in fresh produce supply chains. Since 2014 we have been certifying farms that commit to the formation of worker-manager “leadership teams” to achieve and verify ongoing compliance with our rigorous labor, food safety and integrated pest management standards.

EFI began working with farms in San Quintin in 2014, and we have currently certified six in the region, including Rancho Nuevo and Rancho Agrícola Santa Monica, which are referenced in “Certified Exploitation.” After the March 2015 worker protests, an EFI delegation including employer, union and retailer representation met twice with the founders of SINDJA to explore whether we could work together to improve wages and working conditions. After the second meeting, SINDJA rejected EFI’s collaborative approach and declared that they would not work with us because of our engagement with employers and retailers. Nonetheless, EFI has consistently affirmed our respect for SINDJA’s right to organize, and we welcomed the 2019 Mexican Labor Reform measures that were designed to facilitate the formation of independent unions.

Since James Daria began his research in 2017, through Facebook posts and other outreach to solidarity groups, SINDJA has published a steady stream of allegations of labor abuse on EFI-certified farms in San Quintin along the lines of those contained in “Certified Exploitation.” Over the years, EFI has responded by assessing the allegations and integrating them into our annual verification audits to corroborate and address them. We have also conducted our own off-cycle investigations, requesting evidence from SINDJA that they have yet to provide. After the publication of “Certified Exploitation,” EFI contracted Arche Advisors to investigate the report’s allegations.

In January 2024, two Arche investigators spent four days at Rancho Nuevo and Rancho Agrícola Santa Monica and conducted a total of 120 worker interviews, both in structured sessions and more



casually in the fields. They were given unfettered access to both sites, including all growing and housing areas. They also spoke with local authorities in San Quintin, who have been conducting increased farm inspections of their own in recent years, in the context of the 2019 Labor Reform, and as SINDJA has focused attention on worker rights in the region. Though Arche Advisors provided some useful feedback to farm management and EFI, the investigators were unable to substantiate any of the claims made in “Certified Exploitation.”

With specific regard to the issues raised by the Business and Human Rights Resource Center in your email of March 1, the investigation at Rancho Nuevo and Rancho Agrícola Santa Monica established the following:

- The presence of non-independent “yellow” unions on farms, a **violation of the right to organise and collectively bargain**: interviews with the local office of the Ministry of Labor confirmed that in well-documented free and fair elections, workers on both farms chose by significant margins to ratify collective bargaining agreements with their respective current unions rather than to seek new representation. No evidence was obtained regarding any sort of illegal employer interference or undermining of freedom of association or collective bargaining. The CAL report does not appear to take into account any of the 2019 labor law reforms or the recent legally mandated union legitimization process intended to eliminate employer protection unions. EFI would add that our standards require respect for freedom of association, but it is not our role to select one union over another. Workers should be free to make that choice, and all indications are that this freedom was respected on the two farms in question.
- **Forced overtime**: 80% of workers interviewed said unequivocally that they were not required to work overtime. The remaining 20% noted the importance of working overtime to earn additional funds, or pointed to the fact that company-provided transportation leaves when the majority of the workforce decides to leave, whether at the end of regular time or after overtime. Workers are free to arrange their own transportation if they choose not to work overtime, or to wait for the bus.
- Misclassification of workers and misuse of seasonal contracts, **depriving workers of legal entitlements**, including holiday pay, legally owed bonuses, and social security, and wage theft through use of piece-rate payment: contrary to the allegations in “Certified Exploitation,” the Mexican Ley Federal del Trabajo (LFT) does not contain any restriction on the use of piece rate pay. Rancho Nuevo and Rancho Agrícola Santa Monica have not been cited for non-compliant payment practices despite having their payroll records reviewed by government inspectors. Workers on the farms are guaranteed a minimum daily rate of 440 pesos, which is 17% higher than the mandated minimum daily wage of 374.89. Pay records were reviewed and in all instances the piece rate pay exceeded that of the minimum wage plus overtime, indicating there is not a pay shortage based on the minimum wage required by law. Review of payroll records also confirmed that overtime premiums are paid according to the Mexican labor law.
- **Retaliation** against workers who assert their rights and **sexual harassment** against workers: both these allegations are direct violations of EFI’s labor standards, but we cannot investigate them without some evidence or indication of a specific occurrence. Nobody has yet stepped forward to offer such evidence in the 7 years since SINDJA began its attacks on EFI, and none of our off-cycle investigations or annual audits, which in that period include hundreds of worker interviews, have substantiated these allegations. Each EFI leadership team includes a male and a female member who are trained to respond to claims of sexual harassment.
- Evidence of **forced labour** with migrant workers for Rancho Agrícola Santa Mónica being recruited with deceptive promises, compelled to sign secret contracts, having identity documents and pay withheld, debt bondage, intimidation and threats: 100% of the workers interviewed by Arche Advisors who claim to originate from another Mexican state confirmed that they came to Baja California on their own, without invitation or assistance from an employer prior to arrival.

100% of the workers spoken to at Rancho Nuevo confirmed that management has never retained their original documents. Regarding the allegations at Rancho Agrícola Santa Monica, it was determined that in order to work legally and to be fully registered in the IMSS (social security system), workers must provide their employer with their *Constancia de Situación Fiscal*, a tax document which many migrant workers are unaware of and do not know how to secure. Upon arrival at the farm, workers are asked to submit their documentation to apply for their *Constancia* if they hadn't already obtained one. Their documents may have been retained from 2-3 days up to 2 weeks, depending on how long it took to process the application, but were then promptly returned.

- **Abusive working and living conditions**, isolation and restriction of movement, and forced overtime, all ILO indicators of forced labour: Housing was toured and shown to offer dorm accommodations, a canteen, showers and toilets. It is fenced in with a security person identifying visitors upon entry. There is no restriction to exit the site. The canteen was seen to have a well-staffed and clean kitchen. There is a cell phone charging station inside the canteen for workers to charge their phones while they eat or spend time inside. Workers interviewed reported that they found the housing to be adequate and comfortable. They stated it is clean and not crowded and they have access to sanitary facilities.

Beyond these specific allegations, "Certified Exploitation" raises more general concerns about the limitations of third-party audits in identifying indicators of forced labor, pre-audit worker coaching, intimidation of workers who join EFI "leadership teams," and a lack of awareness among workers about the terms of the standard and its implementation. EFI's purpose in training worker-manager "leadership teams" is to establish an ongoing verification mechanism for conformance with our standards, recognizing that even a rigorous annual audit can fail to capture important information. By combining extensive worker interviews during the audit with regular meetings of the leadership team to surface and address worker concerns or suggestions between audit cycles, we strive to create continuous improvement mechanisms to prevent or address violations of our standards. EFI certification is not a guarantee that problems or even violations will not occur, but it does indicate that the management systems are in place to surface concerns and suggestions, and to remedy problems. Given high rates of turnover in the agricultural workforce, we do acknowledge the need to provide more orientation to new workers regarding their role in understanding and upholding EFI standards, and their relationship to the leadership team.

I want to affirm very clearly that if any worker on any EFI-certified farm experiences the type of violations alleged in "Certified Exploitation," EFI acknowledges our responsibility to hear and address their grievance. EFI recognizes that workers may wish to remain anonymous in raising concerns, but at the same time we need something more than hearsay to establish whether a farm has failed to meet our standards and should therefore face decertification. Despite our requests, neither SINDJA nor James Daria has ever provided EFI with anything to back up their allegations. This failure to provide evidence, not to mention a series of factual errors in the interpretation of Mexican labor law, raise serious questions about the credibility of "Certified Exploitation" as anything other than a strategy to build support for SINDJA, which after 8 years of organizing has established a membership of only 44 workers, only one of whom actually works on either of the two EFI-certified farms profiled in the report. SINDJA has every right to challenge the "corporatist" unions on EFI-certified farms, but it must also acknowledge that, based on elections deemed free and fair by the Mexican Ministry of Labor, workers on EFI-certified farms overwhelmingly voted to ratify collective bargaining agreements with their current unions, rather than to seek representation from SINDJA. Is that outcome best explained as the result of an international corporate plot to suppress an independent union? Or is it possible that workers who have actually experienced improvements in wages and working conditions, and who resented and resisted SINDJA's demand for work stoppages, freely chose their status quo

over SINDJA's proposals? Absent any more substantial evidence of labor abuse than the allegations in "Certified Exploitation," EFI has no basis for revoking the certification status of Rancho Nuevo and Rancho Agrícola Santa Monica.

There is certainly more work to do in improving wages and working conditions in San Quintin and throughout the produce supply chain. Implementing effective labor protections for a migrant workforce with high turnover and limited formal education requires real commitment to continuous improvement. I continue to believe that EFI certification and our related skill development and capacity building programs are a force for positive change because that is what I hear consistently from workers on every farm I visit, and from EFI's Leadership Team Committee, a group of workers and managers from certified farms who meet regularly with our board of directors.

The authors of "Certified Exploitation" never reached out to EFI. The energy that went into publishing their report would have been better invested in good faith dialogue and collaboration to measurably improve the lives of agricultural workers.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter O'Driscoll". The signature is fluid and cursive, with the first name "Peter" being the most prominent.

Peter O'Driscoll
Executive Director