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Who's Watching the Watchdog?: Are the Names of Corporations Mandated to Disclose under the California Transparency in Supply Chain Act Subject to a Public Records Request?

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ABSTRACT

Trafficking is a highly dynamic and fluid criminal phenomenon. Determined traffickers react remarkably well to consumer demand and under-regulated economic sectors and easily adapt to legislative weaknesses. Corporate globalization of manufacturing and storefronts is contributing to human trafficking; aiding in forced labor in becoming the fastest growing and the third most widespread criminal enterprise in the world. As technology advances, allowing greater and easier access to goods from more remote countries, vulnerable populations become easier targets for traffickers to exploit. Understanding U.S. markets are key destinations for goods, enlightened states are looking to bolster their anti-trafficking criminal codes by requiring businesses to better clarify their efforts to discourage human trafficking/forced labor within their supply chains. The California State Legislature has begun an aggressive approach aimed at fostering greater public awareness of slave labor by requiring certain businesses to clearly articulate their anti-trafficking/anti-forced labor policies. California was the first government – local, state or federal - to codify mandatory policy disclosures. The California Transparency in Supply Chains Act of 2010 requires businesses domiciled in California and earning more than \$100 million to conspicuously disclose on their publically accessed webpage, what policies, if any, they have implemented to detect and fight slave labor. The legislature intended to equip the common consumer with the needed information to effectively hold businesses accountable for human rights abuses. In order for the public to properly hold businesses accountable for their labor practices, it is essential the names of business subject to the disclosure be made public. The California Public Records Act should be a tool for concerned consumers and advocates to obtain the statutory list of affected companies.

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I. Introduction

Trafficking is a highly dynamic and fluid criminal phenomenon. Determined traffickers react remarkably well to consumer demand and under-regulated economic sectors and easily adapt to legislative weaknesses.¹ The California State Legislature has begun an aggressive approach aimed at fostering greater public awareness of slave labor by requiring certain businesses to clearly articulate their anti-trafficking/anti-forced labor policies within their supply chains.

Corporate globalization of manufacturing and storefronts is contributing to human trafficking; aiding in human trafficking becoming the fastest growing² and the third most widespread criminal enterprise in the world.³ According to the State Department's 2012 *Trafficking in Persons Report*, there may be as many 27 million adults and children in forced labor, bonded labor, and forced prostitution worldwide.⁴ An estimated 2.5 million people worldwide are compelled into forced labor at any given moment.⁵

As technology advances, which allows for greater and easier access to goods from more remote countries, vulnerable populations become easier targets for

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¹ United States Department of State, *Trafficking in Persons Report* (United States Department of State: 2010), 4. available at <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm#rpt> (last visited January 31, 2011).

² Nidhi Kumar, "Reinforcing Thirteenth and Fourteenth Amendment Principles in the Twenty-first Century: How to Punish Today's Masters and Compensate Their Immigrant Slaves," *Rutgers Law Review* 58, (2006): 303, 306-07 (quoting Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley, CA: University of California Press, 2004) 6, 232 identifying three factors that he believes have led to the resurgence of slavery "The first is the population explosion that flooded the world's labor markets with millions of poor and vulnerable people. The second is the revolution of economic globalization and modernized agriculture which has dispossessed poor farmers and made them vulnerable to enslavement. In the new world economy capital flies wherever labor is cheapest, and the financial links of slavery can stretch around the world. The third factor is the chaos of greed, violence, and corruption created by this economic change in many developing countries, change that is destroying the social rules and traditional bonds of responsibility that might have protected potential slaves").

³ Luz Estella Nagle, "Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude," *Wisconsin International Law Journal* 26, (2008): 131, 137.

⁴ United States Department of State, *Trafficking in Persons Report* (United States Department of State: 2012), 7. available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

⁵ International Labour Organization, *Forced Labor Statistics Factsheet* (2007)

traffickers to exploit.⁶ Traffickers are reaping enormous financial gain from the emerging “global culture.” Global profits derived from forced labor are estimated to be in excess of \$31.6 billion, annually.⁷ Understanding U.S. markets are key destinations for goods, enlightened states are looking to bolster their anti-trafficking criminal codes by requiring businesses to better clarify their efforts to discourage human trafficking/forced labor within their supply chains.

The California legislature was the first government – local, state or federal – to codify mandatory anti-trafficking policy disclosures. The *California Transparency in Supply Chains Act of 2010* requires businesses domiciled in California and earning more than \$100 million to conspicuously disclose on their publically accessed webpage, what policies, if any, they have implemented to detect and fight slave labor. The legislature intended to equip the common consumer with the needed information to effectively hold businesses accountable for human rights abuses. In order for the public to properly hold businesses accountable for their labor practices, it is essential the business subject to the disclosure be made public. The California Public Records Act should be a tool for concerned consumers and advocates to obtain the statutory list of affected companies.

II. Corporate Globalization and Human Trafficking in the United States

a. Human Trafficking is Modern Day Slavery

Human trafficking and sexual exploitation are unspeakable atrocities that ravage the lives of its victims and is commonly organized into three chief

⁶ Luz Estella Nagle, “Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude,” *Wisconsin International Law Journal* 26, (2008): 131, 138; Dr. Raneen Khooshie Lal Panjabi, “Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century,” *Denver Journal of International Law and Policy* 37, no. 1 (2008): 1, 3.

⁷ Patrick Besler, *Forced Labour and Human Trafficking: Estimating the Profits*, working paper (Geneva, International Labour Office, 2005) [\$15 billion - 49% is generated in industrialized economies, \$9.7 billion – 30.6% is generated in Asia and the Pacific, \$1.3 billion – 4.1% is generated in Latin America and the Caribbean, \$1.6 billion – 5% is generated in sub-Saharan Africa, and \$1.5 billion – 4.7% is generated in the Middle East and North Africa.].

categories: (1) Commercial Sexual Exploitation or CSE;⁸ (2) Forced Labor;⁹ and (3) Domestic Servitude.¹⁰ Federal and state statutory definitions vary; however they contain common elemental threads. Trafficking is generally defined as the recruitment, transportation, or harboring of a person against their will through the use of force, coercion, fraud, or deception, to be exploited for sex or forced labor purposes. Traffickers are rapacious and treat victims' bodies as renewable resources. Too often victims sustain horrific physical and psychological abuse from traffickers and exploitative consumers.¹¹

Traditionally, law enforcement has employed a myopic view of human trafficking, focusing primarily on the sexual exploitation trade (i.e. prostitution).¹² Strongly influenced by advocacy groups, federal and state governments have begun to re-conceptualize their understanding of human trafficking to include compelled and forced labor. In its June 2010 *Trafficking in Persons Report*, the United States Department of State reported, "More people are trafficked for forced labor than commercial sex."¹³ The State Department also highlighted the International Labour Organization's estimates that there is nine times the amount of trafficked victims subjugated into forced labor than the sex trade.¹⁴ Textile manufacturing, domestic labor providers, construction sites, and agricultural employment roles¹⁵ are garnering renewed societal and regulatory scrutiny for their

⁸ See Generally, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While*, Cornell University ILR School, International Labour Office [Commercial Sexual Exploitation (CSE) is a special sub-class of forced labor. Because of its particularly heinous nature is commonly separated and listed as an enumerated "form" of trafficking].

⁹ See Generally, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While*, Cornell University ILR School, International Labour Office ["forced labor" is a term that could encompass most all actions, traditionally in relation to human trafficking forced labor refers to: hotel/hospitality, peddling, restaurant work, sweatshop/garment, child/elderly care, and construction].

¹⁰ See Generally, *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While*, Cornell University ILR School, International Labour Office [While domestic servitude is a form of forced labor, it has traditionally been separated from other forms of forced labor such as mining and agricultural work].

¹¹ See NAT'L COAL. AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING FACTS 1 (2012), available at <http://www.ncadv.org/files/HumanTrafficking.pdf> (reporting that female victims of sex trafficking sustain serious physical injuries, have an increased risk of contracting HIV, and other sexually transmitted diseases, and meet the clinical criteria for posttraumatic stress disorder).

¹² *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, Kim, Kathleen and Chang, Grace; Legal Studies Paper No. 2007-47 December 2007 p1.

¹³ United States Department of State, *Trafficking in Person Report* (United States Department of State: 2010), 4. available at <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm#rpt> (last visited January 31, 2011).

¹⁴ *Ibid.*, 7.

¹⁵ See generally, *The War on Human Trafficking: U.S. Policy Assessed*, Anthony M. DeStefano Rutgers University Press (2008).

sources of labor. Unwitting consumers will often support these industries with their purchase of forced labor-made goods.

The largest concentrations of trafficked victims within the United States are located in California, Oklahoma, Texas and New York.¹⁶ With the state's extensive borders, major shipping ports, and powerful economy, California is an enticing and fertile terminal for traffickers to sell victims and exploit their victim's labor.¹⁷ Recognizing its critical role as a market destination,¹⁸ California has aggressively updated its criminal and civil codes.

In 2012, the California Attorney General formed a new Human Trafficking Work Group. The workgroup was comprised of a comprehensive multidisciplinary cross-section of local law enforcement anti-trafficking task forces, human trafficking victim services organizations, domestic violence and sexual assault service providers, immigrant rights groups, legal services providers, academia, and technology companies. The workgroup discussed pressing issues such as: how to collect and organize data on the nature and extent of trafficking in California, law enforcement investigation and prosecution challenges, victim services challenges, further legislative efforts, and law enforcement and community training advancement and how technology can be utilized to prevent and detect victims. The meetings culminated in an updated statewide report. The 2012 report contained these findings:

- From mid-2010 to mid-2012, California's nine regional human trafficking task forces identified 1,277 victims, initiated 2,552 investigations, and arrested 1,798 individuals.
- In the same two-year period, California's task forces provided training to 25,591 law enforcement personnel, prosecutors, victim service providers, and other first responders. Several non-governmental organizations have also trained judicial officers, airport personnel, social service providers, pro

¹⁶ U.S. Dep't of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003* (2004) [In Fiscal Year 2002, the Office of Refugee Resettlement issued letters to benefit offices in fourteen states, of which the largest concentrations were to Texas (31 percent), Florida (nineteen percent), and California (14 percent). Note that these concentrations reflect where victims were living after victimization and do not necessarily reflect where they were victimized.] (available at <http://www.justice.gov/archive/ag/annualreports/tr2003/050104agreporttocongresstvprav10.pdf>) (last visited January 31, 2011).

¹⁷ *Human Trafficking in California: Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*. (available at http://www.ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf) (last visited January 31, 2011).

¹⁸ Human Rights Center. (2005) *Freedom Denied: Forced Labor in California*, University of California, Berkley, (available at <http://www.hrcberkeley.org/download/freedomdenied.pdf>) (last visited February 2, 2011.).

bono attorneys, and retail businesses, among others. The variety of individuals who have been trained underscores the pervasiveness of human trafficking and the important role that governmental and non-governmental actors play in detecting trafficking and assisting victims.

- 72% of human trafficking victims whose country of origin was identified by California's task forces are American. The public perception is that human trafficking victims are from other countries, but data from California's task forces indicate that the vast majority are Americans.
- Labor trafficking is under-reported and under-investigated compared to sex trafficking. 56% of victims who received services through California's task forces were sex trafficking victims. Yet, data from other sources indicate that labor trafficking is 3.5 times as prevalent as sex trafficking worldwide.
- Transnational gangs are increasingly trafficking in human beings because it is a low penal risk and high monetary reward, and a renewable profit source. It is critical for federal, state, and local law enforcement and labor regulators to collaborate across jurisdictions to disrupt and dismantle these increasingly sophisticated, organized criminal networks.
- A vertical prosecution model run outside routine vice operations can help law enforcement better protect victims and improve prosecutions. Fostering expertise about human trafficking within a law enforcement agency and handling these cases outside routine vice operations can prevent erroneously viewing trafficking victims as perpetrators.
- Early and frequent collaboration between law enforcement and victim service providers helps victims and prosecutors. Victims who receive immediate and comprehensive assistance are more likely to help bring their traffickers to justice.
- Traffickers are reaching more victims and customers by recruiting and advertising online. Traffickers use online advertising and Internet-enabled cell phones to access a larger client base and create a greater sense of anonymity. Law enforcement needs the training and tools to investigate trafficking online.
- Technology is available to better identify, reach, and serve victims. Tools like search-term-triggered messages, website widgets, and text short codes

enable groups to find victims online, connect them with services, and encourage the general public to report human trafficking.

- Alert consumers need more tools to leverage their purchasing power to reduce the demand for trafficking. Public and private organizations are just beginning to create web-based and mobile tools to increase public awareness and educate consumers about how to help combat human trafficking.

California is a key battleground in the fight against human trafficking. California contains several major points of entry into the United States from Central/South America and the Pacific Rim. The agricultural economy and manufacturing and powerful customer base also provide the “pull” factors many traffickers seek.¹⁹ Understanding its role as a major market destination for traffickers,²⁰ the California Legislature has attempted to systematically and holistically amend its governing codes to give victims legal protections ensuring comprehensive penal redress and are attempting to foster greater awareness of the origin of products.

A deeper understanding of human trafficking requires a critical analysis of not only the criminal acts and intent, but also understanding the economics of how slave made products affect the local marketplace. By illuminating tainted supply chains, governments can begin to effectively reduce consumer demand, hopefully reducing forced labor. The California Transparency in Supply Chains Act of 2010 (CTSCA) clearly states its target and purpose:

It is the policy of this state to ensure large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking.²¹

¹⁹ CAL. DEP'T OF JUSTICE, OFFICE OF THE ATT'Y GEN., THE STATE OF HUMAN TRAFFICKING IN CALIFORNIA 2012 (2012) available at <http://oag.ca.gov/human-trafficking/2012> (last visited December 21, 2012); *Human Trafficking in California: Final Report of the California Alliance to Combat Trafficking and Slavery Task Force*. (available at http://www.ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf) (last visited January 31, 2011).

²⁰ Human Rights Center. (2005) *Freedom Denied: Forced Labor in California*, University of California, Berkley, (available at <http://www.hrcberkeley.org/download/freedomdenied.pdf>) (last visited February 2, 2011.).

²¹ SB 657

The California Legislature, in requiring specific businesses²² to provide anti-trafficking policy information on their websites, is attempting to arm the consumer with crucial information they would not otherwise have access to. This forced disclosure is made with the hopes that businesses will begin to implement and/or maintain effective anti-human trafficking policies based on potential public scorn and reputational harm.

b. The Diffuse Nature of Corporate Globalization Has Increased the Marketplace for Slave Made Goods

The globalization of the marketplace has led to more opaque and complex supply chains.²³ Across the world there are hundreds of thousands of trafficked victims forced to work in controlled environments where the worker is effectively isolated and easily dominated: remote farms, mineral quarries, raw material mines, off-shore fishing platforms, or industrial sweatshops. While a majority of multi-national corporations do not publicly condone human trafficking, they do, however, share a common goal – maximizing profits. Lower labor costs permit companies to produce cheaper commodities and in-turn increases their market share and profit margins. This is often irresistible, allowing otherwise honorable companies to become lax in the supply chain investigations or seek out increasingly less reputable suppliers in hopes of reducing their costs.

A 2011 U.S. Department of Labor study found 130 products from 71 countries were made by forced and child labor – mostly originating in Asia, Africa and South America.²⁴ With California's economy being a sought after destination, the California State Legislature wanted to provide consumer awareness and informational disclosures upon which societal pressures could be leveraged upon retail sellers. Many anti-slavery groups argued that the CSCTA “would create an opportunity for California companies to demonstrate leadership in eradicating slavery and human trafficking from their supply chains and empower consumers to reward companies that proactively engage in such efforts.”²⁵ Many large companies and retail sellers already impose internal standards and procedures to

²² See SB 657 (stating that this Act applies to retail sellers and manufacturers who do business in California and have \$100,000,000 in gross-receipts world-wide each year).

²³ United States Department of State, *Trafficking in Persons Report* (United States Department of State: 2012), 26. available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

²⁴ U.S. Department of Labor's *List of Goods Produce by Child Labor of Forced Labor*, U.S. Department Office of Labor Bureau Of International Labor Affairs Office of Child Labor, Forced Labor, and Human Trafficking, p. 27 available at www.dol.gov/ilab/programs/ocft/PDF/2011TVpra.pdf.

²⁵ Gebauer, Susanne, *Complying with The California Transparency in Supply Chains Act 2010*, Society of Corporate Compliance and Ethics, August 2011.

ensure the environmental and ethical treatment of their employees and that the sources of their raw materials were not obtained through human rights abuses.²⁶

However, where industry has demonstrated a reluctance to ensure societal responsible activities, methods that utilize market forces to pressure companies into the legitimate, non-illicit economy ought to be aggressively advanced. Market forces have been affected by “[t]he corporate social responsibility movement [which] seeks to influence directly or indirectly or control corporate behavior through a combination of (1) marketplace activism (influence over or via capital structure and sales of the corporation), (2) internal self-regulation (codes of conduct), and (3) shareholder activism.”²⁷ Marketplace activism is an attempt to apply external pressure against a wrong-doing corporation; such pressure can include boycotts by consumers, and shaming those consumers who do not honor the boycott. Publicly naming corporations who fail to abide by basic human rights in their factories has proven an effective method.²⁸

Slave labor supports an abundance of industries. From the more traditional fashion, agricultural, and mining industries;²⁹ slave labor has spread to support the emerging industrial base of technology manufacturing. A majority of companies want to be good corporate citizens. Proper supply chain disclosure could provide an opportunity to burnish a company’s brand. As California Attorney General Harris, herself, has stated in her book *Smart on Crime*, “Those who know they have a lot to lose are more likely to engage in a cost-benefit analysis of the consequences of a crime.”³⁰ In order for effective marketplace activism, consumers and anti-trafficking groups wishing to hold companies accountable for

²⁶ See Miguel Marcos, *Are you sure that your shirt is slavery-free?: The California Transparency in Supply Chains Act of 2010*, p.3 available at <http://www1.umn.edu/humanrts/links/CaliforniaTrafficking2011.pdf> [Citing Steve New, “The Transparent Supply Chain: Let your consumers know everything about where your products come from – before they discover it first,” *Harvard Business Review* 76, (2010) (commenting that “consumers, governments, and companies are demanding details about the systems and sources that deliver the goods. They worry about quality, safety, ethics, and environmental impact. Farsighted organizations are directly addressing new threats and opportunities in answering the question where does this stuff come from? But many companies are already making a strong case for provenance of their products.” *Id.* at 77.). See also Paul Tyrrel, *Buyers unravel the ethics behind the label*, Sept. 15, 2010, THE FINANCIAL TIMES LIMITED (commenting that the Global Reporting Initiative, a network of 20,000 organizations developing a framework for corporate sustainability reporting, published, “The Transparent Economy”, a report that identified traceability as a key challenge in corporate reporting over the next decade). The Transparent Economy is available at Global Reporting Initiative, <http://www.globalreporting.org/LearningAndSupport/GRIPublications/LearningPublications/Explorations/>.].

²⁷ Eric Engle, “Corporate Social Responsibility (CSR): Market-Based Remedies for International Human Rights Violations?,” *Willamette Law Review* 40, (2004): 106.

²⁸ Diane L. Fahey, “Can Tax Policy Stop Human Trafficking?,” *Georgetown Journal of International Law* 40, (2009): 378-379.

²⁹ *Labor Trafficking in Supply Chain*, Global Freedom Center, p. 1, available at <http://t.co/NpRuUxiK>.

³⁰ Kamala D. Harris, *Smart on Crime* (San Francisco: Chronicle Books, 2009), 96.

their supply chain practices, it is crucial the public have access to which companies are subject to the CSCTA.

III. Application of California's Public Records Request to the CSCTA

The CSCTA requires retail sellers and manufactures doing business in California, with worldwide gross receipts in excess of \$100 million, to disclose to the public their efforts to ensure their supply chains are free of forced labor. The CSCTA's intent was unquestionably to provide information for concerned consumers.³¹ To effectuate this disclosure, the California Franchise Tax Board (FTB) is charged with compiling a list of entities falling within liability status and to provide the list to the California Attorney General's Office by November 30th of each associated year.³² At the time of passage of the bill there were an estimated 3,200 companies with a sufficient presence triggering disclosure.³³ To date, approximately 600 companies have California Supply Chain titled policy pages.³⁴ While a company falling under CSCTA's jurisdiction is not legally required to affirmatively engage in eradication methods or procedures, they are required to publicly state what, if any, methods they do employ. The presumed pressure in disclosure of non-activity would provide the anti-trafficking advocacy community substantive material for a "name and shame" public campaign.³⁵ The CSCTA was designed illuminate a product's manufacturing stream, leveraging societal pressures and market incentives to encourage good corporate citizenship and best practices. As concerned consumers and anti-trafficking groups wish to ensure proper corporate compliance, the list compiled by the FTB may be the subject of a public records request.

a. California's Rule to Public Disclosures

The Public Records Act was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies.³⁶ California Government Code Section 6250 states: "... [A]ccess to information concerning the conduct of the people's business is a

³¹ S.B. 657, 2010 Leg., Reg. Sess. (Cal. 2010) (enacted).

³² See Cal. Rev. & Tax Code Sec. 19547.5.

³³ AP – *Salve Labor Targeted in Calif. Law, Social Media*, available at <http://abcnews.go.com/US/wireStory/slave-labor-targeted-calif-law-social-media-15260774>, visited January 3, 2012.

³⁴ On file with Author

³⁵ Ibid.

³⁶ Consolidated Irr. Dist. v. Superior Court, 205 Cal. App. 4th 697 (2012).

fundamental and necessary right of every person in this state”³⁷ and a public record “includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency....”³⁸ California case law has routinely held that implicit in the democratic process is the notion that government should be accountable for its actions and, in order to verify accountability, individuals *must* have access to government files to permit checks against the arbitrary exercise of official power and secrecy in the political process – essentially creating citizen auditors.³⁹ Unless explicitly exempted by the legislature, all public records may be examined by any member of the public with no greater interest than idle curiosity.⁴⁰ While disclosure is not absolute,⁴¹ it is to be broadly construed and exemptions are narrowly construed.⁴² An agency opposing disclosure under the California Public Records Act (CPRA) bears the burden of proving that an exemption applies⁴³ and such an assertion is reviewable by petition for writ of mandate in a “reverse-CPRA” lawsuit.⁴⁴

The list of companies subject to the CSCTA compiled by the Franchise Tax Board and statutorily disclosed to the Attorney General’s Office clearly falls within these definitions and public concern. The information contained in the FTB list is an essential component of the legislative intent of public disclosure. Without the disclosure of the list the public would not have the ability to verify the Attorney General’s faithful and diligent adherence to its mandate as watchdog and the proper execution of the *sole* statutory remedy of injunction. As the Legislature specifically found:

Absent publicly available disclosures, consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from the taint of slavery and trafficking. Consumers are at a disadvantage in being able to force the eradication of slavery and trafficking by way of their purchasing decisions.⁴⁵

³⁷ See Cal. Gov. Code Section 6250.

³⁸ See Cal. Gov. Code Section 6252.

³⁹ International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court, 42 Cal. 4th 319, 165 P.3d 488 (2007) [emphasis added].

⁴⁰ San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist., 139 Cal. App. 4th 1356 (2006).

⁴¹ American Civil Liberties Union of Northern Cal. v. Superior Court, 202 Cal. App. 4th 55 (2011).

⁴² County of Los Angeles v. Superior Court, 211 Cal. App. 4th 57 (2012).

⁴³ County of Santa Clara v. Superior Court, 170 Cal. App. 4th 1301 (2009).

⁴⁴ Marken v. Santa Monica-Malibu Unified School Dist., 202 Cal. App. 4th 1250 (2012).

⁴⁵ S.B. 657, 2010 Leg., Reg. Sess. (Cal. 2010) (enacted).

Allowing business names to be subject to a public records request creates the citizen auditors the case law presumes and legislature intended to create. Absent a valid exception, the denial of a request by the Franchise Tax Board or the California Attorney General's Office would clearly frustrate the spirit and essence of the CSCTA.

b. Exceptions to Disclosure

Disclosure of public records pursuant to California Public Records Act (CPRA) involves two fundamental, yet competing, interests: (1) prevention of secrecy in government and (2) protection of individual privacy.⁴⁶ All public records are subject to disclosure unless the legislature has expressly provided to the contrary⁴⁷ and will be narrowly construed.⁴⁸ In assigning weight to the general public's interest in disclosure, courts should look to the nature of the information and how disclosure of that information contributes to the public's understanding of government.⁴⁹ As even the Attorney General's office has routinely opined: "[M]ost records maintained by state and local agencies are subject to disclosure."⁵⁰

The FTB is expressly enjoined from disclosing "information as to the amount of income or any particulars (including the business affairs of a corporation)" included in tax returns filed with the Board.⁵¹ The name and state identifying number of a corporation are explicitly excluded from this prohibition.⁵² The California Revenue and Tax Code defines "[b]usiness affairs," as "details relative to the business activities of the entity as disclosed by the return but . . . exclude extraneous matters, such as the exact corporate title, [and state] corporate number..."⁵³ This extraneous information can be disclosed as long as "there is no reason to believe that the information will be used for commercial list purposes."⁵⁴ The public policy exception to the tax return privilege, preventing compelled disclosure of tax returns, is narrow and only applies when warranted by a legislative declaration,⁵⁵ supporting a compelling state interest.⁵⁶ These exceptions

⁴⁶ Gilbert v. City of San Jose, 114 Cal. App. 4th 606 (2003).

⁴⁷ Teamsters Local 856 v. Priceless, LLC, 112 Cal. App. 4th 1500 (2003).

⁴⁸ American Civil Liberties Union of Northern Cal. v. Superior Court, 202 Cal. App. 4th 55 (2011).

⁴⁹ Humane Society of the United States v. Superior Court of Yolo County, 214 Cal. App. 4th 1233 (2013).

⁵⁰ AG Opinion No. 07-208, 2008 Cal. AG LEXIS 25, at 2 (May 19, 2008).

⁵¹ See Cal. Rev. & Tax Code Sec. 19542.

⁵² See Cal. Rev. & Tax Code Sec. 19542.

⁵³ See Cal. Rev. & Tax Code Sec. 19543(a).

⁵⁴ See Cal. Rev. & Tax Code Sec. 19543(a).

⁵⁵ Deary v. Superior Court, 87 Cal. App. 4th 1072 (2001).

⁵⁶ Fortunato v. Superior Court, 114 Cal. App. 4th 475 (2003).

are rarely sustained.⁵⁷

Retailers subject to list identification are likely to assert their loss of competitive advantage in the market place by disclosing annual receipts. Any tangential privacy interest arising from its identification as an entity subject to the parameters of the CTSCA directly conflicts with the legislation's express directives. At its core, the CTSCA is a public awareness and disclosure law. Even under the balancing of equities analysis, any perceived privacy interest in the list information held by a corporation must bow, to the express intent of the law and the public's overriding interest in disclosure.⁵⁸ Mere assertion of possible endangerment from the disclosure of public records does not "clearly outweigh" the public interest in access to the records, as required to compel nondisclosure.⁵⁹ The courts have repeatedly held that the fear of possible condemnation or embarrassment is insufficient to prevent disclosure of records under a valid California Public Records Act request.⁶⁰ Additionally, a corporation's annual revenue is not confidential information. Its mandatory annual 10-K filing with the Security and Exchange Commission, a company is required public reporting of the exact same worldwide revenue. This information is subject to public inspection and is published in numerous outlets - often found on the corporation's own website. Given these similar parallel public-reporting requirements, any concern of loss of confidentiality are entirely hollow. Provided the body of case law, the Attorney General's own published legal opinions, and the lack of confidentiality, the balancing test of Section 6255 must fall in favor of the public's interest in disclosure.

IV. Conclusion

Globalization of the manufacturing base and marketplace storefront encourages the movement of people and capital across borders. While this corporate evolution is not inherently predatory, trafficking syndicates often capitalize on the permeable nature of borders and the unique need of a large and available workforce.⁶¹ Human trafficking is an egregious crime that occurs in almost every country in the world. As corporations spread globally, searching for cheaper labor costs increase the risk to vulnerable populations. The further the supply chain is removed from the end consumer, higher the likelihood of illicit

⁵⁷ Fortunato v. Superior Court, 114 Cal. App. 4th 475 (2003).

⁵⁸ See Cal. Gov't Code Sec. 6255.

⁵⁹ County of Santa Clara v. Superior Court, 170 Cal. App. 4th 1301(2009).

⁶⁰ New York Times Co. v. Superior Court, 52 Cal. App. 4th 97 (1997).

⁶¹ Dr. Raneer Khooshie Lal Panjabi, "Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century," Denver Journal of International Law and Policy 37, no. 1 (2008): 6-7.

criminal activity and the less likely the consumer will be aware of it.⁶²

If a corporation is certain the behavior of their suppliers will not be discovered, potential rewards and sanctions become exceedingly less relevant. Information disclosure is therefore a vital tool for consumer awareness and lead to meaningful social controls. When corporations are held accountable to the consumer – corporate behavior is monetarily motivated to change. With proper supply chain disclosure, activists can target corporations who sell goods which fail to meet the community's standards and voice their disapproval with a free market approach by taking their business elsewhere. Because corporate profit margins are too often elevated above human right concerns, policy makers are exploring new avenues to encourage good corporate behavior.⁶³ The United States has one of the world's most powerful economies. From that position of strength, it stands in a unique position to influence corporate behavior.

A comprehensive approach to fighting forced labor involves a strong criminal justice response, but also necessarily includes effective methods of public awareness to prevent future predation. Our legislatures and legal systems have begun to formulate and structure the necessary responses to protect those who are vulnerable. Instead of promoting better business practices and foreign labor conditions through government action, the power to effect change lies in the (invisible) hands of the consumers and their free market approach of demand. The California legislature has crafted an attempt to give the consumer the role of watchdog. Making the list of companies required to comply with CSTCA public is an essential component to the effectiveness of the law. Failing to make the list public would deprive the concerned citizens of California their right to ensure full compliance with and enforcement of this landmark law.

⁶² See Patrick Keenan, Patrick, "Do Norms still matter? The Corrosive effects of Globalization on the vitality of Norms," *Vanderbilt Journal of Transnational Law* 41, no. 2 (2008): 327, 355-370.

⁶³ United States Department of State, *Trafficking in Person Report* (United States Department of State: 2012), 7, 26. available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.