Jostein Solheim
Chief Executive Officer
Ben & Jerry's Homemade Inc.
30 Community Drive
South Burlington, VT 05403

May 5, 2017

Dear Mr. Solheim,

As a group of civil society organizations dedicated to the full realization of human rights in the United States, we are writing to urge you to protect workers' rights by honoring your June 2015 commitment to enter into a legally binding agreement to join the Milk with Dignity Program. Protecting workers' rights is a key tenet of Ben & Jerry's corporate mission,[1] and Milk with Dignity realizes this commitment.

The Need for Greater Protections for Workers' Rights in the Vermont Dairy Industry

Farmworkers' rights are too often unfulfilled in Vermont. A 2014 survey of 172 dairy workers across Vermont by the worker organization Migrant Justice revealed that on average individuals work 60-80 hour weeks, often for less than minimum wage, with no day off, and with inadequate protections against workplace injury and illness.[2] Employer-provided housing is often overcrowded and substandard, leaving workers vulnerable to freezing Vermont winters. In some cases, workers are housed in barns in close proximity to animals. Dairy workers also face a high risk of workplace injury or fatality, as agriculture ranks among one of the most hazardous industries in the United States.[3]

Further, farmworkers in the United States, including in Vermont, have historically been – and continue to be – excluded from labor legislation protecting workers' rights to organize, collectively bargain, and raise grievances without facing retaliation. This lack of legal protections, coupled with the discrimination faced by farmworkers as a disproportionately immigrant, Latino, and non-English speaking workforce, make farmworkers uniquely vulnerable to abuse and obstruct their ability to

[1] Ben & Jerry's, Our Values, http://www.benjerry.com/values.
[2] Migrant Justice, Farmworkers Document Abuse & Propose Solution: Milk with Dignity! https://migrantjustice.net/sites/default/files/FinalSurveyMay2015.pdf.
[3] Agricultural Safety, Nat'l Inst. for Occupational Safety and Health, Centers for Disease Control and Prevention, https://www.cdc.gov/niosh/topics/aginjury/. Nationally, the number of fatalities among agricultural workers is on the rise, with 180 deaths in 2018 (a 22% increase from the previous year). National Census of Fatal Occupational Injuries in 2015, U.S. Dep't of Labor, Bureau of Labor Statistics 3, https://www.bls.gov/news.release/pdf/cfoi.pdf. In New York, the fatality rate of agricultural and forestry workers is 14.9% higher than other industries. See Margaret Gray, Dairy & Death in New York State, Adelphi Univ. (Spring 2016). The 2014 Survey by Migrant Justice also suggests that Vermont Dairy workers face high levels of workplace related injury and illness. Migrant Justice, Farmworkers Document Abuse & Propose Solution: Milk with Dignity!, https://migrantjustice.net/sites/default/files/FinalSurveyMay2015.pdf.

address infringements of their rights directly with their employers or at the state and federal level.

The conditions on some dairy farms in Vermont stand in stark contrast to Ben & Jerry's public commitments to workers' rights. The company has recently highlighted its social mission aimed to "impact human rights, workers' rights, and social justice."[4] Ben & Jerry's has also made public commitments to a fair and global economy, sustainable food systems, and racial justice,[5] consistent with its values-led ethos, where ingredients are purchased as an investment in local communities "in a way that creates a positive social impact."[6]

Ben & Jerry's public statements signal a commitment to respecting the dignity and human rights of workers on dairy farms, which include rights to just and favorable conditions of work, an adequate standard of living, and a life of security, peace, and dignity. To deliver on its social justice mission, Ben & Jerry's should now honor its promise to join the Milk with Dignity Program.

Joining the Milk with Dignity Program is Critical to Advance Ben & Jerry's Commitment to Workers' Rights

The Milk with Dignity Program exemplifies Worker-Driven Social Responsibility (WSR), an innovative approach led by workers to protect and promote workers' human rights while fostering change in supplier culture and supporting long-term sustainability on farms. Under the WSR model, buyers in a supply-chain agree to only purchase a product from suppliers that agree to, and are in good standing with, a rights-based code of conduct designed by and for workers. Milk with Dignity, like other WSR programs, is defined by three key features that distinguish it from corporate-led initiatives. Milk with Dignity: (1) involves workers in drafting, designing, and monitoring the program; (2) includes independent and continuous monitoring mechanisms; and (3) ensures compliance through legally binding enforcement mechanisms with concrete market consequences for employers that fail to make improvements.

Each of these elements of the Milk with Dignity Program represents an independent, yet interconnected reason for Ben & Jerry's to join the Milk with Dignity Program:

First, Ben & Jerry's should join the Milk with Dignity Program because workers play an essential role both in designing the program to best protect workers' rights, and monitoring the program to ensure lasting improvements. In the WSR model, workers draft specific standards for the code of conduct, design the structures to independently assess and remedy breaches of those standards, and are the primary drivers for identifying non-compliance through worker-to-worker training, as well as through individual complaints. This level of worker participation is not only required by human rights standards that protect everyone's rights to meaningfully participate in decisions that affect their lives and well-being, but is essential for the efficacy of any initiative to improve workers' rights in the supply chain.

Workers are in the best position to define their own needs, identify when these needs are not met, and to understand when their rights are violated. It is thus essential that workers play a lead role in drafting codes of conduct to ensure that the substantive protections they contain are tailored to the specific industry and local context and cover key areas of worker concern.[7]

Worker participation is also essential when it comes to *monitoring* the code of conduct, as workers are

[4] *See* Jostein Solheim, CEO, Ben & Jerry's, "Conscious Capitalism" at the Stanford Graduate School of Business Global Speaker Series (Feb. 17, 2017),https://www.youtube.com/watch?v=gs8zmShBUVk (noting that because Ben & Jerry's is a company in power, "[i]n the face of injustice, [there is] a duty as a company in power to speak up").

[5] Ben & Jerry's, Our Values, http://www.benjerry.com/values.

[6] Jostein Solheim, "Conscious Capitalism"; *see also* Stanford Daily, Got Milk with Dignity? (Mar. 3, 2017), http://www.stanforddaily.com/2017/03/03/got-milk-with-dignity/.

[7] For example, in the Florida tomato industry, the worker-authored code of the Fair Food Program opted to maintain a system of pay based on the number of buckets of tomatoes filled, but set a weight requirement for a "full" bucket to curb employers' practice of requiring buckets to be overflowing in order for workers to be paid for that bucket. Only those intimately familiar with the tomato industry would identify the practice of requiring overfilled buckets as a priority concern to address.

best placed to identify breaches of the code, and indeed in many cases are the *only* actors capable of exposing violations. Failure to adequately include workers in a monitoring program undermines workers' trust in the program and risks numerous breaches going undiscovered.

Entering into a binding agreement to join the Milk with Dignity Program would recognize and ensure the essential role of workers in fully understanding and addressing workplace abuses.

Second, Ben & Jerry's should join the Milk with Dignity Program because continuous and independent monitoring is essential to encourage compliance and to ensure that breaches of the code are effectively investigated and addressed. Under the WSR model, an independent monitoring body with specialized expertise is set up with the agreement of workers and buyers in the supply chain to receive, investigate, and adjudicate worker complaints of breaches of the code of conduct. The monitor additionally conducts periodic audits involving site visits and worker interviews. In this way, the independent monitor works closely with workers to identify potential breaches of the code. The monitor investigates and determines breaches, and designs remediation plans, with an appeal mechanism for resolving any dispute regarding the existence of a violation. Such monitoring is essential to obtain a clear and credible picture of what happens on farms, to identify real or potential rights violations, and to effectively improve conditions in the long-term.

By contrast, where a monitoring program relies on employer self-assessments, or where consultants are unilaterally selected by a corporation to perform periodic audits, there is no guarantee of adequate independence, or that all violations will be identified. Employers may face structural impediments to discovering all violations and may have incentives to distort conditions when conducting self-assessments, and monitoring bodies that are largely funded or selected by corporations are particularly susceptible to real or perceived bias. Where corporate-selected monitors are relied upon, there are numerous examples of employers modifying practices immediately before an audit they were informed was coming, or coaching survivors to lie to inspectors about working conditions under threat of dismissal.[8] Indeed, company-led audits risk failing to identify and address serious risks of harm to workers. The September 2012 factory fire in Karachi, Pakistan that killed nearly 300 workers represents just one sobering example.[9] As reported in the NY Times, while the factory had been certified by an auditor shortly before the fire as having met international standards in various areas including health and safety, the reality was quite different, with survivors of the fire recalling locked emergency exits and barred windows that prevented workers from leaping to safety.[10] Similarly, before the 2013 collapse of Rana Plaza in Bangladesh, in which over 1,100 workers were killed and 2,000 others were injured, audits covering occupational health and safety of two of the factories in the building had failed to identify structural safety risks,[11] despite the building's upper stories being illegally built and its materials being substandard.[12] When workers expressed fear for their safety the

[8] *See, e.g.*, Marcus Stern, Latte Illusion (Jan. 19, 2017), http://thesourcefilm.com/ (describing how coffee farmers in Mexico know when inspectors are coming in advance and can hide child labor taking place on their farms); Declan Walsh & Steven Greenhouse, Inspectors Certified Pakistani Factory as Safe Before Disaster, N.Y. Times (Sept. 19, 2012), http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html (explaining that factory workers in Pakistan recalled being warned of visits by inspectors and coached to lie about their working conditions).

[9] Clean Clothes Campaign & SOMO, Fatal Fashion: Analysis of Recent Factory Fires in Pakistan and Bangladesh: a Call to Protect and Respect Workers' Lives (March 2013), https://cleanclothes.org/resources/publications/fatal-fashion.pdf

[10] *See* Declan Walsh & Steven Greenhouse, Certified Safe, A Factory in Karachi Still Quickly Burned, N.Y. Times (Dec. 7, 2012), http://www.nytimes.com/2012/12/08/world/asia/pakistan-factory-fire-shows-flaws-in-monitoring.html.

[11] Clean Clothes Campaign, Press Release: BSCI 10th Anniversary Shame over Rana Plaza, (June 25, 2013) https://cleanclothes.org/news/press-releases/2013/06/25/bsci-10th-anniversary-shame-over-rana-plaza; Business Social Compliance Initiative, Press Release: BSCI Saddened by the Collapse of Rana Plaza in Savar, Bangladesh (Apr. 24, 2013), http://www.bsci-intl.org/news/bsci-saddened-collapse-rana-plaza-savar-bangladesh; Jim Zarroli, 3 Years Later, Bangladeshi Survivors Remember the Collapse of Rana Plaza, NPR (Apr. 24, 2016), http://www.npr.org/sections/thetwo-way/2016/04/24/475499651/3-years-later-bangladeshi-survivors-remember-the-collapse-of-rana-plaza.

[12] Julfikar Ali Manik and Nida Najar, Bangladesh Police Charge 41 With Murder Over Rana Plaza Collapse,

day before the collapse, owners nonetheless urged employees to return to work.[13]

The Milk with Dignity Program is designed to ensure accurate monitoring. The monitoring entity, the Standards Council, is shaped with worker and company participation and buy-in, but maintains independent relationships with all stakeholders. Its dual pronged approach of a 24-hour hotline to identify concerns, combined with periodic audits, is designed to ensure that workplace abuses are identified and quickly addressed at the earliest stage possible.

Third, Ben & Jerry's should join the Milk with Dignity Program because it ensures that farms are held accountable for remedying violations of the code of conduct, with concrete market consequences where farms fail to make improvements. The WSR model includes structures to enforce the code of conduct built into the program itself – particularly important in low-wage sectors with high turnover, such as farming, where governmental intervention has proven inadequate to sufficiently curb abuses, and where litigation can lead to inadequate remedies. Under WSR, buyers in supply-chains sign legally binding agreements to purchase only from suppliers in good standing with the program. This produces a market incentive for suppliers to enter the program and to adhere to the program's code of conduct. The Milk with Dignity program fosters a collaborative, gradual approach to compliance through corrective action plans and ongoing monitoring for most breaches of the code. Market consequences will be automatically triggered only in cases of limited, severe rights violations – such as forced labor or physical violence – and otherwise will only apply where an employer fails to make improvements in line with an action plan. This creates concrete financial incentives for employers to honor the code of conduct.

By contrast, approaches to advancing workers' rights and safety that lack strong enforcement mechanisms are likely to be ineffective, as well as potentially dangerous. Absent structures that impose direct and immediate market consequences, supply-chain initiatives may not be able to ensure that non-compliance is adequately remedied. Programs such as the "Common Code for the Coffee Community" (now part of the Global Coffee Platform), for example – which allowed non-complying coffee growers to continue to benefit from the license to sell "4C Coffee" as long as they could show they were taking some "action," even if that action proved ineffective – have thus been roundly criticized for failing to adequately enforce the program's standards.[14] In many cases, the public relations benefit of mere participation in any such initiative may overshadow any negative public relations impacts emanating from failures to meet the program's standards. Thus, such programs risk entrenching unsafe or abusive conditions by providing a veneer of legitimacy while lacking any stick to demand anything more than cosmetic changes.

Under the WSR model, workers need not rely on the good will and voluntary action of employers to safeguard their rights, as they can utilize independent enforcement mechanisms that they established in agreement with buyers. In addition, worker participation in designing complaint mechanisms and responses fosters an accessible and transparent approach to remediation of violations, consistent with human rights standards.

In summary, WSR models overcome the shortcomings of alternative approaches in protecting workers' basic dignity and human rights to fair working conditions, health, and safety. Moreover, WSR programs have already been successfully implemented elsewhere. The Fair Food Program, established by the Coalition of Immokalee Workers in the tomato industry in Florida is a powerful example of a regime with full worker participation in monitoring and enforcement that delivers real accountability for workers. U.N. experts on business and human rights praised the Fair Food Program as a "groundbreaking model" for promoting labor rights in partnership with farmworkers, providing a model for protecting human rights in corporate supply chains that "ensures a substantive role for the rights holders themselves."[15] The U.N. Special Rapporteur on Trafficking in

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N.Y. Times (June 1, 2015), https://www.nytimes.com/2015/06/02/world/asia/bangladesh-rana-plaza-murder-charges.html?_r=0.

[13] Id.

[14] MSI Integrity, 2013 MSI Evaluation Report: Common Code for the Coffee Community (4C), http://www.msi-integrity.org/wp-content/uploads/2013/04/4C-Working-Evaluation-Report-FINAL.pdf.

[15] Rep. of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business

Persons applauded the Fair Food Program as an "international benchmark" in preventing modern slavery.[16]

The Milk with Dignity Program promises similar transformational reforms for the dairy industry in Vermont, and presents a valuable opportunity for Ben & Jerry's to establish itself as an industry leader. We thus call on Ben & Jerry's to enter into a legally binding agreement to make the Milk with Dignity Program operational.

Sincerely,

American Civil Liberties Union Human Rights Program

Center for Constitutional Rights

Coalition of Immokalee Workers

Columbia Law School Human Rights Clinic

International Federation for Human Rights (FIDH)

Global Justice Clinic, NYU School of Law[*]

Human Rights Watch

National Center for Law and Economic Justice

National Economic and Social Rights Initiative

Robert F. Kennedy Human Rights

US Human Rights Network

T'ruah

Worker Rights Consortium

Enterprises, Add. Visit to the United States of America, ¶¶ 55–57, U.N. Doc. A/HRC/26/25/Add.4 (May 6, 2014).

[16] Maria Grazia Giammarinaro (Special Rapporteur on Trafficking in Persons), End of Visit Statement, United States of America, 6-16 December 2016 (Dec. 19, 2016), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21049&LangID=E.

[*] Communications from NYU clinics do not purport to be an expression of the views, if any, of NYU School of Law.