

## **ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia  
(as represented by the Office of the Fair Work Ombudsman)

and

Sea One North Pty Ltd (ACN: 132010336)  
As Trustee For Sea One North Unit Trust (ABN: 51887086318)

and

Mr Chris Barbour

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by:
  - (a) Sea One North Pty Ltd (ACN: 132010336, the **Company**) as Trustee For Sea One North Unit Trust (ABN: 51887086318) trading as Endota Spa Sydney; and
  - (b) Mr Chris Barbour (**Mr Barbour**), as Director of the Company.

### BACKGROUND

2. The Company is a franchisee of Endota (No1) Pty Ltd (**Endota Spa**).
3. The Company trades in the hair and beauty industry.
4. As at April 2019, the Company operated six day spas across New South Wales and employed approximately 80 employees.
5. The Company's day spas provide a range of spa and beauty treatment services and sell spa and beauty treatment-related products.
6. In November 2017, the FWO commenced an investigation after it received requests for assistance (**RFAs**) from Employee A and Employee B (see Attachment A). This Undertaking refers to the two employees as the **Employees**.
7. In their RFAs, the Employees alleged that the Company made deductions from the pay of its employees engaged under Temporary Work (Skilled) visas (Subclass 457) (**457 Visas**) for visa-related costs. This Undertaking refers to the Company's employees engaged under 457 Visas as **457 Visa Employees**.

#### *Relevant Industrial Instruments*

8. The terms and conditions of the Employees' employment with the Company were governed by the FW Act and the *Hair and Beauty Industry Award 2010* [MA000005] (**Hair and Beauty Award**). Individual Flexibility Agreements (**IFAs**), made in accordance with clause 7 of the Hair and Beauty Award, were entered into between the Company and the Employees. The IFAs applied to the Employees for the duration of their respective periods of employment.

### *Summary of Contraventions*

9. The FWO has determined, and the Company and Mr Barbour admit, that the Company contravened the following Commonwealth workplace laws:
- (a) Section 45 of the FW Act, by:
    - (i) Failing to pay Employee A and Employee B public holiday penalty rates in accordance with clause 35.3 of the Hair and Beauty Award.
  - (b) Section 90(2) of the FW Act, by:
    - (i) Failing to pay Employee A accrued annual leave on termination of employment.
  - (c) Section 99 of the FW Act, by:
    - (i) Failing to pay Employee A personal/carer's leave.
  - (d) Section 324 of the FW Act, by:
    - (i) Making deductions from the pay of the 457 Visa Employees, that were not authorised in writing by the employees and principally for the benefit of the employees; and
    - (ii) Making a deduction from Employee B's final pay that was not authorised in writing or principally for the benefit of Employee B.

### *Deductions*

10. Between 1 May 2014 and 7 February 2018, the Company made unlawful fortnightly deductions from the pay of thirteen 457 Visa Employees (see Attachment A) to the total value of \$58,025.00. Prior to the commencement of the investigation in November 2017, the Company had already back-paid \$30,625.00 in relation to these deductions. The deductions purported to operate as means of security in case the employee left suddenly. The Company would reimburse a percentage of the money periodically as the employment progressed. If the employee did leave suddenly, they would forfeit the balance held as security. This Undertaking refers to these unlawful deductions as **457 Visa Deductions**.

### *Rectification of Contraventions*

11. By November 2018, the Company had rectified all of the contraventions detailed in paragraph 9. This included \$58,025.00 for 457 visa deductions and \$7,914.87 for the

remaining other contraventions, making a total underpayment rectification of \$65,939.87. These underpayments are itemised in Attachment A.

12. The Company has provided evidence and assurances to the FWO that, as at November 2017, it ceased its practice of making 457 Visa Deductions and is now compliant with s324 of the FW Act.

#### *Involvement of Director*

13. Mr Chris Barbour admits and agrees that:
  - a. He has been the Director of the Company since 2 July 2008;
  - b. Because of his office as Director he was ultimately responsible for the overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
  - c. Because of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.

#### **COMMENCEMENT OF ENFORCEABLE UNDERTAKING**

14. This Enforceable Undertaking comes into effect when:
  - a. The Enforceable Undertaking is executed by the Company and Mr Barbour and the FWO accepts the Enforceable Undertaking so executed; and.
  - b. Will expire unless breached on 30 June 2021.

#### **ENFORCEABLE UNDERTAKING**

15. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

##### **FWO My Account Registration**

- a. Within 21 days of the execution of this Undertaking:
  - i. Register with the FWO My account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register) and fully complete the My account profile, including information about the Company and award coverage, through this portal;

- ii. Using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account; and
  - iii. Provide to the FWO the My account Customer Registration Number (CRN).
- b. Within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO knowledge of the use of My account, including saving information within My account from the website and relevant FWO online tools.
- c. Within 21 days of the execution of this Undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:
  - i. Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
  - ii. Choose the relevant State/s and industry and select information updates on the following options:
    - 1. Pay rates and entitlements;
    - 2. New products and resources;
    - 3. About us and our work;
    - 4. Updates in my industry; and
    - 5. Tailored information that's relevant to me.

#### **Workplace Relations Systems and Processes**

- d. Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Hair and Beauty Award.
- e. Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with subparagraph 15(d) above.

#### **Workplace Relations Training**

- f. Ensure that all persons responsible for management, payroll and human resources functions complete the educational activities on the FWO website, as set out in Attachment D.
- g. For each person required to complete the education activities, enter all of the required information in Attachment D and provide copies of the completed attachment to the

FWO within 120 days of the execution of this Undertaking.

- h. For a period of two years from the execution of this Undertaking, ensure that any new or existing employees or contractors, who, after the commencement of this Undertaking, acquire managerial, payroll and/or human resource functions responsibilities, complete the educational activities.
- i. For any persons taking on any of these functions, complete Attachment D and submit to the FWO within 28 days of taking responsibility for these functions.

### **Apology**

- j. Send a letter of apology (**Apology Letter**) to Employees A to M inclusive listed in Attachment A in the form of Attachment C to this Undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking.

### **Audit Activity**

- k. Cause to have performed by the Company, or at the Company's expense by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, two audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**).
- l. Each Audit will include:
  - i. The pay and conditions of 20 percent of the Company's employees;
  - ii. Two consecutive full pay periods;
  - iii. A range of classifications and employment types (full time, part time and casual employees); and
  - iv. Employees from the Company's spas located in:
    - 1. Martin Place, Sydney NSW;
    - 2. Four Seasons, Sydney NSW
    - 3. Crows Nest NSW;
    - 4. Paddington NSW;
    - 5. Rozelle NSW; and
    - 6. Chatswood NSW.

### *Audit Periods*

- m. The Audits will cover two consecutive full pay periods within the following periods:

- i. 15 June 2019 to 15 July 2019 (**Audit 1**); and
  - ii. 15 June 2020 to 15 July 2020 (**Audit 2**)
- (together, the **Audit Periods**).

#### *Audit Completion Dates*

- n. The Audits will be completed by the following dates:
  - i. Audit 1 – 31 August 2019; and
  - ii. Audit 2 – 31 August 2020

(together, the **Audit Completion Dates**).
- o. The Company will ensure that the following requirements are met:
  - i. 21 days prior to the Audit Completion Dates specified in subparagraph 15(n) above the Company will provide to the FWO, for the FWO's approval, details of the methodology to be used to conduct the Audit;
  - ii. Upon completion of each Audit, produce a report on the outcomes of the Audit and provide it to the FWO within 28 days of the Audit Completion Date. The report must include a statement about the methodology used to conduct the audit and details of the Company's compliance or non-compliance with the clauses of the Hair and Beauty Award and sections of the FW Act.
- p. In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 28 days of the Audit Completion Dates specified in subparagraph 15(n) above, including rectification of any and all underpayments to employees, and provide evidence of rectification to the FWO.
- q. If requested, provide the FWO with all records and documents used to conduct the Audit(s), including any working documents, within seven days of such a request.
- r. If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of the Audit Completion Dates specified in subparagraph 15(n) above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund. The Company will complete the required documents supplied by the FWO.

#### **Matters Notified to the FWO**

- s. Where the FWO receives a request for assistance regarding non-compliance with the

FW Act or an industrial instrument up until the expiration of the undertaking, the Employer and its officers undertake to fully co-operate with the FWO to ensure compliance with Commonwealth workplace laws. This includes:

- i. Providing all requested employment records and other documentation to the FWO relevant to the request for assistance;
- ii. Participating fully in any subsequent requests for information relevant to the request for assistance, including participation in any formal records of interview; and
- iii. Co-operation in FWO processes employed to resolve the request for assistance.

### **Public Notice**

- t. Place a public notice (**Public Notice**) in the Saturday edition of the Daily Telegraph – Inner West Region (**Inner West Courier**) within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
  - i. Bear “Sea One North Pty Ltd” and “Endota Spa” as the Company’s legal name and trading name;
  - ii. Appear within the first five pages of the Inner West Courier;
  - iii. Must be at least 10 cm x 8 cm; and
  - iv. Be in the form of Attachment B.
- u. Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice.

### **Workplace Notice**

- v. Within 28 days of the execution of this Undertaking, cause to be displayed within all the workplaces controlled by the Company, a notice in the form of Attachment B to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display and the location of the Workplace Notice in the workplace:
  - i. Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
    1. In locations to which all employees who work at the workplaces have access;
    2. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and

3. For a period of 28 continuous days.
- ii. At the end of the period of 28 days provide confirmation to the FWO that the Workplace Notices have been continuously displayed for the required period.

### **Record Keeping**

- w. Within 28 days of the execution of this Undertaking, provide to the FWO a copy of time and wage records and payslips for one employee engaged on a 457 visa as a massage therapist for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws.

### **Contribution Payment**

- x. Within 28 days of the execution of the Undertaking make a payment of \$10,000.00 to the Commonwealth Government's Consolidated Revenue Fund and provide evidence of the payment to the FWO.

### **Reporting**

- y. The Company will notify the FWO of any changes of circumstances that could potentially impact on the Company's ability to comply with the undertakings contained in this Undertaking as soon as it becomes aware of such circumstances. Such circumstances shall include but not be limited to:
  - i. Sale or potential sale of the business, or part of the business;
  - ii. Change of or change in details of company directors, or other officeholder positions;
  - iii. Change in engagement of workers, for example engaging contractors, labour hire or family members in lieu of employees;
  - iv. The Company or its director(s) opening any new establishments or businesses, or acquiring any existing business establishments, whether alone or in partnership with another entity;
  - v. Ceasing or an expectation of ceasing to trade; or
  - vi. Business going in to administration or liquidation.
- z. In the event that there are any events or circumstances described in subparagraph 15(y) above, the Company and Mr Barbour will provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

## **Employee Reporting**

- aa. Within 120 days of the execution of this Undertaking, the Company will report to the FWO on all employees that worked for the Company during the previous 90 days from the date this Undertaking was executed. The Company will complete a signed declaration that the Company is remunerating its employees in accordance with its legal obligations including but not limited to the FW Act, the Hair and Beauty Award and superannuation legislation. A copy of the declaration is located at Attachment E and is to be provided to the FWO every 120 days for a period of 2 years.

## **No Inconsistent Statements**

- 16. The Company and Mr Barbour:
  - a. Must not; and
  - b. Must ensure that each of its officers, or authorised company representatives, do not,
    - i. Make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this Undertaking.

## **ACKNOWLEDGEMENTS**

- 17. The Company and Mr Barbour acknowledge that:
  - a. The FWO may:
    - i. Make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - ii. Release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
    - iii. Issue a media release in relation to this Undertaking;
    - iv. From time to time, publicly refer to this Undertaking (and any of the Attachments hereto) and its terms; and
    - v. Rely upon the admissions made by the Company and Mr Barbour set out in paragraph 10 above in respect of decision making concerning any future non-compliance with Mr Barbour's workplace relations obligations.

18. Consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein.
19. Consistent with section 715(3) of the FW Act, the Company and Mr Barbour may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.
20. If the Company contravene any of the terms of this Enforceable Undertaking:
  - a. The FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
  - b. This Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraph 10 above, and also in respect of the question of costs.

**EXECUTED AS AN UNDERTAKING**

EXECUTED by Sea One North Pty Ltd (ACN: 132010336) as Trustee For Sea One North Unit Trust (ABN: 51887086318) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

Sole

CHRIS BARBOUR

(Name of director)

Sole

(Signature of director/company secretary)

(Name of director/company secretary)



(Signature of Mr Barbour)

25/6/2019

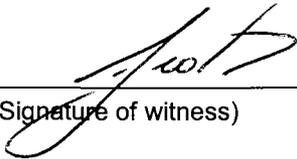
(Date)

in the presence of:

25/6/2019

(Date)

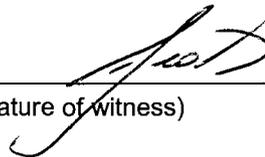
in the presence of:



(Signature of witness)

Andrew Seaton

(Name of witness)



(Signature of witness)

Andrew Seaton

(Name of witness)

Accepted by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009*:



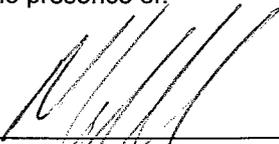
Linda McAlary-Smith

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

28/6/19

(Date)



(Signature of witness)

Michael Campbell

(Name of Witness)

**Attachment A – Employees Affected by the Contraventions**

<b>Section 45 of the FW Act – Failing to pay public holiday penalty rates in accordance with clause 35.3 of the Hair and Beauty Award</b>			
<b>Employee title</b>	<b>Employee name</b>	<b>Total underpayment</b>	<b>Total back-payment</b>
Employee A		\$3,015.81	\$3,015.81
Employee B		\$788.58	\$788.58

<b>Section 90(2) of the FW Act - Failing to pay accrued annual leave upon termination of employment</b>			
<b>Employee title</b>	<b>Employee name</b>	<b>Total underpayment</b>	<b>Total back-payment</b>
Employee A		\$601.63	\$601.63

<b>Section 99 of the FW Act - Failing to pay personal/carer's leave</b>			
<b>Employee title</b>	<b>Employee name</b>	<b>Total underpayment</b>	<b>Total back-payment</b>
Employee A		\$1,903.85	\$1,903.85

<b>Section 324 of the FW Act – Making periodic deductions from the pay of the 457 Visa Employees that were not authorised in writing and principally for the benefit of the employees</b>			
<b>Employee title</b>	<b>Employee name</b>	<b>Total underpayment</b>	<b>Total back-payment</b>
Employee A		\$1,500.00	\$1,500.00
Employee B		\$4,000.00	\$4,000.00
Employee C		\$6,000.00	\$6,000.00
Employee D		\$5,000.00	\$5,000.00
Employee E		\$7,000.00	\$7,000.00
Employee F		\$5,250.00	\$5,250.00
Employee G		\$5,000.00	\$5,000.00
Employee H		\$2,000.00	\$2,000.00
Employee I		\$2,000.00	\$2,000.00
Employee J		\$5,500.00	\$5,500.00
Employee K		\$4,525.00	\$4,525.00
Employee L		\$5,250.00	\$5,250.00
Employee M		\$5,000.00	\$5,000.00

<b>Section 324 of the FW Act - Making a deduction from the final pay of Employee B that was not authorised in writing and principally for the benefit of Employee B</b>			
<b>Employee title</b>	<b>Employee name</b>	<b>Total underpayment</b>	<b>Total back-payment</b>
Employee B		\$1,605.00	\$1,605.00

## **Attachment B – Form of Public and Workplace Notice**

### **Contravention of Fair Work Act by Sea One North Pty Ltd (ACN: 132010336) as Trustee For Sea One North Unit Trust (ABN: 51887086318) trading as Endota Spa Sydney**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Sea One North Pty Ltd (ACN: 132010336) as Trustee For Sea One North Unit Trust (ABN: 51887086318) trading as Endota Spa Sydney (**Company**) contravened the *Fair Work Act 2009* and the *Hair and Beauty Industry Award 2010* by:

- Failing to pay personal/carer's leave of one employee within a fortnight of the leave being taken;
- Failing to pay accrued outstanding annual leave of one employee within a fortnight of the day of termination of employment;
- Failing to pay public holiday penalty rates of two employees; and
- Making deductions from the pay of 13 of its employees that were unauthorised and not principally for the benefit of the employees.

The Company has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including conducting periodic self-audits and making a payment of \$10,000 to the Commonwealth Government's Consolidated Revenue Fund.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment that such conduct will not occur again and that it will comply with all requirements of Commonwealth workplace relations laws in the future.

*Use the following passage in Public Notice*

If you worked for the Company and have queries or questions relating to your employment, please contact **<insert details of internal contact>**. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Fair Work Infoline on 13 13 94.

## Attachment C – Form of Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Sea One North Pty Ltd (ACN: 132010336) as Trustee For Sea One North Unit Trust (ABN: 51887086318) trading as Endota Spa Sydney (**Company**) for non-compliance with Commonwealth workplace laws. An investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company contravened the *Fair Work Act 2009* and the *Hair and Beauty Industry Award 2010* by:

- Failing to pay personal/carer's leave of one employee within a fortnight of the leave being taken;
- Failing to pay accrued outstanding annual leave of one employee within a fortnight of the day of termination of employment;
- Failing to pay public holiday penalty rates of two employees; and
- Making deductions from the pay of 13 of its employees that were unauthorised and not principally for the benefit of the employees.

The Company has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

The Company expresses its sincere regret and apologies to you for failing to comply with its lawful obligations.

As part of the Enforceable Undertaking, we have committed to a number of measures to ensure future compliance with Commonwealth workplace laws.

The Company has taken steps to remedy the similar conduct in relation to all other employees for the period from 1 May 2014 to 7 February 2018, including ceasing the practice of making periodic deductions from the pay of its employees engaged under Temporary Work (Skilled) visas (Subclass 457).

Should you have any questions, please contact us at XXXX or on XXX.

Yours sincerely

**[Director(s) Name]**

## Attachment D – Training Resources Utilised from the Fair Work Ombudsman Website

I, \_\_\_\_\_ (Enter name and position in the organisation)

have undertaken the following tools:

### Completed online courses\* including:

- Difficult conversations in the workplace – manager course    date completed: \_\_\_\_\_
- Hiring employees    date completed: \_\_\_\_\_
- Managing employees    date completed: \_\_\_\_\_
- Managing performance    date completed: \_\_\_\_\_
- Diversity and discrimination    date completed: \_\_\_\_\_
- Workplace flexibility    date completed: \_\_\_\_\_
- Record-keeping and pay slips    date completed: \_\_\_\_\_

*\* Please provide printout of the Statement/Certificate of Attainment for each course completed*

### Viewed Videos including:

- Welcome to fairwork.gov.au    date completed: \_\_\_\_\_
- Finding information for your industry    date completed: \_\_\_\_\_
- My account    date completed: \_\_\_\_\_
- Introduction to the Pay and Conditions Tool    date completed: \_\_\_\_\_
- PACT – Award classifications    date completed: \_\_\_\_\_
- PACT – Pay summary    date completed: \_\_\_\_\_
- PACT – Penalty rates    date completed: \_\_\_\_\_
- PACT – Allowances    date completed: \_\_\_\_\_
- PACT – Award Coverage    date completed: \_\_\_\_\_

### Read Factsheets including:

- Role of the Fair Work Ombudsman    date completed: \_\_\_\_\_
- Contractors and employees – what's the difference?    date completed: \_\_\_\_\_

**Read information on the following:**

• ***Pay Overview***

- Minimum wages                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_
- Penalty rates & allowances Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_

• ***Leave Overview***

- Annual leave                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_
- Sick & carer's leave                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_

• ***Ending Employment Overview***

- Notice & final pay                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_
- Unfair dismissal                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_

• ***Employee Entitlements Overview***

- Types of employees                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_
- National Employment Standards                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_

• ***Awards & Agreements Overview***

- Awards                      Page Ref No. \_\_\_\_\_                      date completed: \_\_\_\_\_

- Date and signature: \_\_\_\_\_

