

*Fair Work Act 2009*

### Section 715 ENFORCEABLE UNDERTAKING

#### Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Senan Pty Limited (ACN 128 934 010) (**Senan**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

#### Background

2. In the period between at least 20 June 2011 to 28 July 2013, Senan operated a Gloria Jean's Coffees franchise at Kiosk 5 & 6 Kings Cross Shopping Centre, Darlinghurst Road, Kings Cross, New South Wales 2011.
3. On or around 3 June 2013 [REDACTED], a casual employee of Senan, made a verbal and written inquiry of Elaine Zhou (**Ms Zhou**), a director of Senan, about whether her rate of pay was correct. [REDACTED] was paid a flat rate of \$12.00 an hour for all hours of work.
4. On 5 June 2013 Ms Zhou, in a telephone conversation with [REDACTED] cancelled [REDACTED] rostered shift for 6 June 2013. Ms Zhou later sent an email to [REDACTED] dismissing her from her employment with Senan.
5. On 12 June 2013 [REDACTED] made a workplace complaint to the FWO regarding her dismissal and entitlements.
6. An investigation by the FWO was commenced and included an audit of all of Senan's employees employed in the period from 20 June 2011 to 28 July 2013 (the **Employment Period**).
7. The investigation identified underpayments of fifteen employees (the **Affected Employees**) who were employed variously as casual and part-time employees to prepare and sell snacks and beverages to the public during the Employment Period.
8. During the Employment Period Senan paid the Affected Employees at rates of pay that were less than their minimum entitlements under the Fast Food Industry Award 2010 (the **Award**) and the FW Act. Senan underpaid the Affected Employees a total of \$16,105.82 during the Employment Period, including \$8,209.78 to a single employee over a period of approximately eighteen months.
9. Following the FWO's investigation Senan rectified the underpayments to all Affected Employees on or around 2 November 2013.

#### Contraventions

10. The FWO has determined, and Senan admits, that Senan contravened:

- (a) section 340(1)(a) of the FW Act by taking adverse action against [REDACTED] on 5 June 2013 because [REDACTED] exercised her workplace right to make an inquiry about her rate of pay, by:
- (i) injuring [REDACTED] in her employment and/or altering her position to her prejudice when Ms Zhou cancelled [REDACTED] rostered shift for 6 June 2013; and
  - (ii) dismissing [REDACTED] from her employment;
- (b) section 45 of the FW Act by failing to comply with the following provisions of the Award:
- (i) Clause 17 - minimum base rates of pay;
  - (ii) Clause 18 - minimum junior rate of pay;
  - (iii) Clause 13.2 - minimum casual loading;
  - (iv) Clause 12.2 - agreement in writing on a regular pattern of work for part time employees on commencement of employment;
  - (v) Clause 12.3 – agreement in writing on any variation to the regular pattern of work of a part time employee;
  - (vi) Clause 26.5(b) - Saturday penalty rates;
  - (vii) Clause 26.5(c)(ii) - Sunday penalty rates;
  - (viii) Clause 30.3 - Public Holiday penalty rates for casual employees;
  - (ix) Clause 28.3(b)(i) - payment of annual leave loading on accrued annual leave upon termination of employment;
- (c) section 44 of the FW Act by failing to comply with subsection 90(2) of the FW Act, a term of the National Employment Standards, by failing to pay part time employees accrued annual leave on termination of employment;
- (d) subsection 535(1) of the FW Act and Regulation 3.36(1)(b) of the *Fair Work Regulations 2009* (the **Regulations**) by failing to keep a record setting out the balance of part time employee leave entitlements; and
- (e) subsection 535(1) of the FW Act and Regulation 3.33(3)(d) of the Regulations by failing to keep a record of any penalty rates paid to relevant employees.

**(Contraventions)**

**Commencement of Undertaking**

11. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Senan; and
  - (b) the FWO accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking, Senan undertake to assume the

obligations set out below.

## **Undertakings**

13. For the purposes of section 715 of the FW Act, Senan undertakes to:

### Future Workplace Relations Compliance

- (a) take all reasonable steps to ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Award and FW Act;

### Apologies

- (b) within 14 days of the commencement of this Undertaking:
- (i) send a letter of apology to ██████ in the form set out in Attachment A; and
  - (ii) send a letter of apology to the Affected Employees (other than ██████), in the form set out in Attachment B;
- (Apologies)**
- (c) provide proof of the Apologies to the FWO within seven days of the Apologies being sent;

### Compensation

- (d) pay ██████ the amount of \$2,000.00 (gross) in five monthly instalments of \$333.33 (gross) and one monthly instalment of \$333.35 being made on the 30<sup>th</sup> day of each month with the first payment commencing on 30 April 2014 and final payment being made on 30 September 2014 in compensation for the economic and non-economic losses suffered by ██████ as a consequence of the adverse action;
- (e) provide proof of payment of the amounts identified in paragraph 13(d) to the FWO within seven days of each payment being made;.

### Workplace Relations Training

- (a) within 90 days the commencement of this Undertaking, ensure that Ms Zhou attends workplace relations training paid for by Senan, that addresses:
- (i) the rights and responsibilities of employers under the FW Act in relation to the employment and termination of employment of employees; and
  - (ii) the General Protections provisions of the FW Act, in particular, under section 340 – Workplace Rights and section 351 – Discrimination.
- (b) ensure the workplace training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO at least 7 days before the training;
- (c) provide to the FWO details of the training course and evidence of Ms Zhou's

attendance, within 7 days after the workplace training;

Procurement of Broader Workplace Relations Advice

- (d) by no later than 30 June 2014 and 30 June 2015, procure industry specific workplace relations advice (whether legal advice or from a person or organisation with specialist skills in workplace relations) to the value of at least \$1,000.00 (excluding GST) per year in relation to changes to the Award entitlements of employees of Senan and/or the obligations of employers under the FW Act; and
- (e) provide evidence of the procurement of the advice referred to in paragraph 14(i) within 7 days of it being supplied to Senan.

**Acknowledgements**

14. Senan acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fwo.gov.au](http://www.fwo.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Senan;
- (e) 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 in this Undertaking;
- (f) if the FWO considers that Senan has contravened any of the terms of this this Undertaking 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;
- (g) consistent with section 715(3) of the FW Act, Senan may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

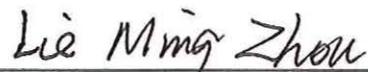
EXECUTED for and on behalf of Senan Pty Ltd by its duly authorised representative:



Elaine Zhou, Director

20, April, 2014  
(Date)

in the presence of:



(Signature of witness)

LIE MING ZHOU

(Name of Witness)

ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* on:

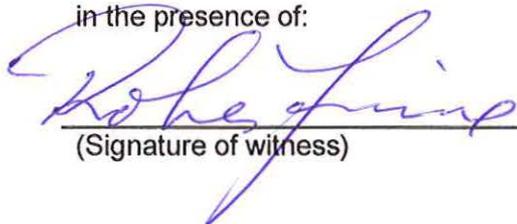


Executive Director – Dispute Resolution  
and Compliance

1 MAY 2014  
(Date)

(an authorised delegate pursuant to an  
instrument of delegation made pursuant to  
section 683 of the FW Act)

in the presence of:



(Signature of witness)

ROBERT PRICE

(Name of Witness)